Calendar No. 642

84TH CONGRESS, 1st Session | SENATE | REPORT No. 637

INSCRIPTION "IN GOD WE TRUST" ON CURRENCY AND COINS

JUNE 27, 1955.—Ordered to be printed

Mr. MONRONEY, from the Committee on Banking and Currency, submitted the following

REPORT

[To accompany H. R. 619]

The Committee on Banking and Currency, to whom was referred the bill (H. R. 619) to provide that all United States currency shall bear the inscription "In God We Trust", having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

GENERAL STATEMENT

This bill would require that all currency and coins of the United States bear the inscription "In God We Trust." At the present time, this inscription appears on all coins, but is required by law only upon those denominations of silver coins on which it was inscribed prior to May 18, 1908 (31 U. S. C. 324). There is no comparable statutory requirement in regard to currency.

Currency has been issued by the United States Government since 1861. Thus, for almost a century, there has been no inscription on our currency reflecting the spiritual basis of our way of life. One reason that this situation has not been remedied heretofore has been the prohibitive cost involved in the necessary redesigning of the dies used in printing currency. However, the Bureau of Engraving and Printing is now planning technological improvements in its printing equipment which will require the preparation of new dies. Therefore, the inscription "In God We Trust" can be incorporated in the new dies with very little additional cost. Your committee believes that this changeover in equipment presents an excellent opportunity to correct an oversight that has existed for so many years.

With respect to coins, it should be noted that the motto "In God We Trust" first appeared on coins of the United States in 1864.

The present law requires that the inscription be placed only on denominations of silver coins on which it was inscribed prior to May 18, 1908. H. R. 619 would simply make mandatory the existing practice of placing the motto on all of our coins.

The bill was approved unanimously by the House Committee on Banking and Currency and the House of Representatives. Similarly, the members of your committee were unanimous in ordering the bill to be favorably reported. The following letter was received from the Treasury Department in regard to this proposed legislation:

TREASURY DEPARTMENT,
Washington, June 27, 1955.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Banking and Currency,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your request for the statement of this Department's views on H. R. 619, to provide that all United States currency shall bear the inscription "In God We Trust."

The proposed legislation would require that at such time as the Bureau of Engraving and Printing of the Treasury Department adopts new dies for the printing of currency, in connection with its current program to increase the capacity of its presses, the dies shall bear the inscription "In God We Trust," and that thereafter all currency and coins shall bear the inscription. As the Department understands the proposal, all currency printed from the present dies would be issued, and currency without the inscription would therefore be issued for some time after adoption of the new die.

Since, as we understand the proposed legislation, it permits the Secretary of the Treasury to include the inscription on currency as new dies are adopted, the change can be made with very little additional cost and without administrative difficulties. Furthermore, all coins at the present time carry the inscription. Accordingly, this Department would have no objection to the enactment of the proposed legislation.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Very truly yours,

W. RANDOLPH BURGESS,
Acting Secretary of the Treasury.

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Calendar No. 643

84TH CONGRESS, 1st Session | SENATE | REPORT No. 638

FEDERAL AID TO STATES ON WILDLIFE RESTORATION PROJECTS

JUNE 27, 1955.—Ordered to be printed

Mr. BIBLE, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 756]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 756) to provide that the United States shall aid the States in wildlife-restoration projects and for other purposes, having considered the same, report favorably thereon, with amendments, and recommend that the bill, as amended do pass.

THE SUBSTITUTE BILL

A BILL To authorize the appropriation of accumulated receipts in the Federal aid to wildlife-restoration fund established by the Pittman-Robertson Act and to authorize the expenditure of funds apportioned to a State under such Act for the management of wildlife areas and resources.

That there is hereby authorized to be appropriated out of the Federal aid to wildlife-restoration fund established by the Act entitled "An Act to provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes", approved September 2, 1937, as amended (16 U. S. C. secs. 669–669i), for the 1956 fiscal year and for each fiscal year thereafter, an amount equal to 20 percent of the accumulated unappropriated receipts in such fund on the date of enactment of this Act, until the accumulated unappropriated receipts in such Fund on such date have been appropriated and expended. Funds appropriated under the authority of this section shall be made available to the States in accordance with the provisions of, and under the apportionment formula set forth in, such Act of September 2, 1937, and shall be in addition to the funds appropriated under section 3 of such Act.

SEC. 2. Section 8 of such Act of September 2, 1937, as amended, is amended by adding at the end thereof the following: "Notwithstanding any other provision of this Act, funds apportioned to a State under this Act may be expended by the State for management (exclusive of law enforcement and public relations) of wildlife areas and resources, but not more than 30 percent of the total amount apportioned to a State for any fiscal year may be expended for such purpose."

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PURPOSE OF THE BILL

S. 756 (and S. 1172, which the committee likewise considered) would make disposition to the States of some $13,467,468.61 of unexpended funds in the Federal aid to wildlife restoration fund. This fund was established by the Wildlife Restoration Act of September 2, 1937, as amended (50 Stat. 917; 16 U. S. C. 669). Into it, under the act, were routed revenues derived from the excise tax on firearms, shells and cartridges, with the provision that Congress make annual appropriations for wildlife restoration, equal to the yearly revenues from the excise tax cited. However, during the period from 1939 to 1947, inclusive, congressional appropriations for wildlife restoration purposes were less than the amount of excise tax revenues placed in the fund, with the result that there was the accumulation of funds noted, which S. 756 and S. 1172 seek to distribute.

The 1937 act provided for distribution of these funds to the States on a matching basis, with the States supplying $1 for each $3 allotted by the Federal Government. The formula for distributing the funds was based on the area of the States and the number of paid hunting license holders in the States, with a further equalizing provision that no State could be given more than 5 percent nor less than one half of 1 percent of the total apportioned to all of them. Where States fail to match the funds allotted to them, the funds in question revert, according to statute, to the Migratory Bird Conservation Fund.

S. 756, as introduced, would allot the unexpended funds now on hand to the States over a 5-year period, 20 percent each year, without the requirement for matching funds. S. 1172, also considered by the committee, would use the entire amount for distribution to the States for use in fiscal 1956, on the statutory matching basis, and would therefore allot the yearly excise tax receipts on firearms, shells, and cartridges for use in the second fiscal year following their receipt. This would make it possible for the States to know, well in advance, exactly how much matching funds would be required of them for each fiscal year, so that provision could be made on that basis.

S. 1172 also would amend the Wildlife Restoration Act of 1937 so that a portion of the program funds would be used in connection with activities involving "management, exclusive of law enforcement and public relations."

BACKGROUND OF THE LEGISLATION

A great deal of interest has been manifested in the proposal to distribute the accumulated funds. Sportsmen's associations and conservation groups from 11 States endorsed the distribution formula proposed in S. 756, as did the witnesses at the hearing representing the National Wildlife Federation and the Wildlife Management Institute, who however, did not reject the matching-funds idea. The International Association of Game, Fish, and Conservation Commissioners went on record for prompt distribution of the accumulated funds in addition to the regular yearly allotments of funds, but suggested that it would not oppose such distribution in accordance with the usual matching provision of the Pittman-Robertson Act.

The Fish and Wildlife Service, through its Director, favored the alternate disposition of the unexpended funds, for use in fiscal 1956,

as in keeping with the normal operation of the 1937 act. Support of the matching-funds formula of the Pittman-Robertson Act was expressed by the Service witness, who likewise expressed approval of that provision in S. 1172, allowing program funds to be used for strictly management purposes.

The General Accounting Office suggested that any distribution of the unexpended funds be made through appropriations within the framework of the 1937 act, but questioned the real need for their distribution to the States.

THE SUBSTITUTE BILL PROPOSED

Inasmuch as the sportsmen of the country had been the sole original source of the accumulated funds to be distributed, the committee felt that their views with regard to such distribution merited primary consideration.

Their requests, as presented by witnesses of the national wildlife restoration and management groups and in numerous communications, that the funds be distributed promptly, as additional allocations over a 5-year period, were deemed persuasive, as against the alternate proposal for allocating the entire accumulation for the 1956 program.

Proponents of this latter plan, which would have made the excise-tax receipts in 1955 and succeeding years available for distribution in the second fiscal year thereafter, argued that the 12 months lapse between collection and use of the funds would provide the States a better opportunity to plan and provide the necessary matching funds.

However, against this the advocates for prompt allocation of the funds additionally over a 5-year period, protested that the plan would merely defer indefinitely 1 full year's tax receipts. Further, they pointed out that under the present statute the States now have 2 years in which to provide the matching funds.

On the other hand, the committee was convinced that allocation of the accumulated funds without the matching requirement of the Wildlife Restoration Act, as proposed in S. 756, would be an unwise departure from the established procedure which has proven itself most satisfactory in actual practice. To offset any additional financial burden that might bear heavily upon a few of the less populous States, the committee accepted the suggestion advanced in the hearings that the Wildlife Restoration Act be amended to permit at least a portion of the allocated funds to be used, as proposed in S. 1172, for "management exclusive of law enforcement and public relations."

A substitute bill accordingly was drafted, which would amend only the sections of the 1937 act as are directly affected, and would not include such portions of S. 756, as introduced, as merely reenact provisions of the present statute.

Section 7 (a) of the act of September 2, 1937, as amended (sec. 669G–1, title 16 U. S. C.) governs the allocation of funds for wildlife projects in territories. The section grants to the Secretary of the Interior full discretionary authority to apportion funds for projects out of the moneys available under the act providing that the apportionment for any one year does not exceed the sum of $75,000 in the case of Alaska, $25,000 for Hawaii, and $10,000 each for Puerto Rico and the Virgin Islands.

The committee feels definitely that the Secretary should give full consideration to the intent of the aforesaid section 7 (a) in his allotment

of the special funds involved; provided, however, that the total allotment of such special funds to any of the territories over the 5-year period shall not exceed the sum specified in section 7 (a) for that territory for any one year.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., May 4, 1955.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

MY DEAR SENATOR MAGNUSON: Your committee has requested a report on S. 756, a bill to provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes, and S. 1172, a bill to amend the Wildlife Restoration Act (16 U. S. C., secs. 669–669i) by providing that the amount of money currently in the Federal aid to wildlife restoration fund shall be available for use during the fiscal year beginning July 1, 1955, defining "wildlife restoration project," and for other purposes.

We recommend the enactment of this proposed legislation in the form of S. 1172 for reasons hereafter stated in this report.

There has been accumulated, but not expended, the sum of $13,467,468.61 in the Federal aid to wildlife restoration fund. This fund was established by the Wildlife Restoration Act of September 2, 1937, as amended (50 Stat. 917; 16 U. S. C. 669). This unexpended amount has been accumulated in the fund because of the fact that although the act authorized annual appropriations equal to the revenues obtained from the excise tax on firearms, shells, and cartridges, the annual appropriations by the Congress during fiscal years 1939 to 1947, inclusive, were less than the excise tax revenues that were placed in the fund. The bills to which this report relates, in addition to other features as hereafter stated, provide for the disposition of this unappropriated fund.

In considering these measures, a brief discussion of the Wildlife Restoration Act of 1937, supra, may be helpful. That act inaugurated a program of Federal aid to wildlife restoration that included, as its primary objective, the acquisition and restoration by the States of areas adaptable as feeding, resting, and breeding places for wildlife. It provided also for research into the problems of wildlife management. That program has been highly successful and the Federal portion of the program has been financed through the appropriation each year of revenue accruing from the excise tax imposed on firearms, shells, and cartridges. Allocations of these appropriated funds are made pursuant to the act to the several States on the basis of a prescribed formula which takes into account the area of the States and the number of paid hunting license holders in the States. To further insure the equitable distribution of funds, no State may be apportioned more than 5 percent nor less than one-half of 1 percent of the total apportioned to all of them. Wildlife restoration projects proposed by the States and falling within the authorizations contained in the act, however, must be financed, in part, by State funds. The States are required to bear 25 percent of the cost of such projects. The balance of the cost may be reimbursed to the States out of the Federal fund.

S. 1172, which we recommend be enacted, would provide suitable disposition of the accumulated moneys in the wildlife restoration fund consistent with the fiscal procedures and the formula relating to distribution of funds, established by the 1937 act. In addition, it would establish a more workable budgetary procedure than is now permitted under the terms of the act, so far as the appropriation of State funds is concerned.

Due to the fact that the amount of the revenues available for distribution to the States under the 1937 act is not known until several months after the end of each Federal fiscal year, the States now have a very inadequate period of time in which to obtain the appropriation of the matching 25 percent of State funds as prescribed by the act. S. 1172 would correct this system, as stated in section 2 thereof, by providing that the amount accruing to such fund during each fiscal year shall be available for use by the States under the provisions of the 1937 act during the second fiscal year following the fiscal year in which such amount accrued to the fund. This will permit the efficient use of the wildlife restoration funds by giving the States sufficient time to perform necessary advance planning of restoration projects and to obtain the appropriation of the necessary State funds, thereby permitting utilization of the full benefits of the Wildlife Restoration Act. It will correct an administrative and budgeting problem that has existed ever since the enactment of the Wildlife Restoration Act of 1937.

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The unexpended balance now in the fund approximately equals the amounts which have been available and appropriated each year during the past few years. Therefore, S. 1172 appropriately provides that the accumulated balance in the fund shall be made available for the use of the States in accordance with the apportionment formula set forth in the act for the fiscal year beginning July 1, 1955. Such funds would be apportioned in lieu of any other amounts otherwise apportioned to the States pursuant to the act.

An incidental but important feature of S. 1172 is the provision contained in section 1 thereof that would amend the Wildlife Restoration Act of 1937, supra, so that program funds may be expended on activities involving "management exclusive of law enforcement and public relations." Such an amendment is urgently needed because the companion restoration program in the fisheries field made possible by the Federal Aid in Fish Restoration Act of August 9, 1950 (64 Stat. 430), authorizes the use of funds for management purposes. With these programs being administered jointly and some of the resultant projects combining both fish and wildlife activities, complications are experienced in the administration of the programs.

S. 756 is contrary to the basic partnership formula governing Federal and State expenditures pursuant to the Wildlife Restoration Act of 1937, supra, and we feel, therefore, that it should not receive favorable consideration. This bill would make available to the several States, in the form of outright grants, over a 5-year period, the sum that has been accumulated in the fund. The enactment of such a proposal would affect adversely the normal operation under the 1937 act, by overlapping and duplicating such operations.

We are apprehensive, therefore, that the enactment of such legislation would lead to confusion. Federal administrative problems relating to the funds would be further complicated and multiplied; some of the States probably could effectively use all of the funds from both sources, others probably could not do so, and there would be some disruption in the established State sponsored wildlife restoration programs.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

FELIX E. WORMSER,
Assistant Secretary of the Interior.

TREASURY DEPARTMENT,
March 8, 1955.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Treasury Department on S. 756 a bill to provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes.

The bill would authorize to be appropriated for wildlife restoration for the next year after its passage 20 percent of the unappropriated and unexpended balance of $13 467,468.61 in the Federal aid to wildlife restoration fund and each fiscal year thereafter for the next 4 years an additional 20 percent until the unappropriated and unexpended balance in said fund is exhausted.

The administration of the wildlife program is a responsibility of the Department of the Interior and this Department is not in a position to comment on the merits of the proposed legislation. However, in the light of the condition of the budget, any proposal which would involve an additional cash outlay from the Treasury should be reviewed carefully to determine whether it is necessary.

In the event the bill should receive favorable consideration by your committee it is believed the following changes should be made in it:

1. As payments by the Treasury are made on the basis of duly certified vouchers, the additional certification to the Secretary of the Treasury provided for in the first sentence of section 5 would serve no useful purpose, and it is recommended that the words "to the Secretary of the Treasury and" in lines 15 and 16, page 5 of the bill, be deleted.

2. In line with the above suggestion, it is suggested that the following language be added after the word "Treasury" in line 24, page 7 of the bill, "on vouchers duly certified by the Secretary of the Interior."

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Very truly yours,

A. N. OVERBY,
Acting Secretary of the Treasury.

TREASURY DEPARTMENT,
March 9, 1955.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Treasury Department on S. 1172, a bill to amend the Wildlife Restoration Act (16 U. S. C., secs. 669–669i) by providing that the amount of money currently in the Federal aid to wildlife restoration fund shall be available for use during the fiscal year beginning July 1, 1955, defining "wildlife restoration project," and for other purposes.

Section 2 of the bill appears to have two purposes. First, it would provide that the amount accruing to the Federal aid to wildlife restoration fund during the fiscal year 1955 and each fiscal year thereafter shall be available for use during the second fiscal year following the fiscal year in which it accrued, rather than in the fiscal year immediately following as provided by existing legislation. Second, the sum of $13,467,468 61, which was credited to the fund in prior years and has not heretofore been appropriated, would be made available for use in fiscal year 1956. The act of September 6, 1950, appropriated for each year amounts equal to the sums credited to the fund during the preceding fiscal year. If it is the purpose of the proposal to make what appear to be new appropriations, as outlined above, the permanent indefinite appropriation made by the act of September 6, 1950, should be repealed.

The administration of the wildlife program is a responsibility of the Department of the Interior and this Department is not familiar with the needs for the proposed legislation.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your Committee.

Very truly yours,

A. N. OVERBY,
Acting Secretary of the Treasury.

MARCH 24, 1955.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 756) to provide that the United States shall aid the States in wildlife restoration projects, and for other purposes.

Under the bill the Secretary of the Interior would be authorized to cooperate with the States through their respective State fish and game departments in wildlife-restoration projects. It would authorize the appropriation for the purposes of the bill of unappropriated receipts totaling $13,467,468.61 which, under the provisions of the act approved September 2, 1937 (50 Stat. 917), are in the Treasury as a special fund known as the Federal aid to wildlife restoration fund. The bill would authorize the appropriation until expended of the $13,467,468.61 on the basis of 20 percent each fiscal year beginning with the next fiscal year after its passage.

It is noted that a number of the provisions of the bill appear to include substantially the same language as some of the provisions of the act approved September 2, 1937. In order to correct an apparent typographical error, the word "constructed" should be substituted for the word "construed" appearing on page 6, line 23 of the bill.

Whether the bill should be enacted presents a question of policy on which the Department of Justice prefers to make no recommendation.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

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DEPARTMENT OF AGRICULTURE,
Washington, D. C., March 10, 1955.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate.

DEAR SENATOR MAGNUSON: We appreciate the opportunity afforded us by your letter of January 28 to report on S. 756, a bill to provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes.

We have no recommendation to make regarding this bill because it would not materially affect the activities of this Department.

The bill would authorize the appropriation of 20 percent each year for 5 years, of the unappropriated balance of $13½ million held in the Federal-Aid to Wildlife Restoration Fund. If S. 756 were enacted and the authorized funds were subsequently appropriated, they would be made available to the States, through the Department of the Interior, for the same type of projects as those provided for under the Pittman-Robertson Federal-Aid Act of 1937. No change in the kind of projects nor the manner of carrying out cooperative projects with agencies in the Department of Agriculture would be involved. There would probably be a small increase in funds that the States, through their fish and game departments, would devote to projects in cooperation with the Forest Service, Soil Conservation Service, or other agencies of the Department of Agriculture. The bill would not alter existing working relationships between this Department and the Department of the Interior or the States.

The bill differs from the Pittman-Robertson Act of September 2, 1937, as amended, in that the States would be relieved of any matching requirement. Under the Pittman-Robertson Act the Federal contribution "* * * shall not exceed 75 per centum of the total estimated cost thereof," and in normal practice results in matching at the ratio of $1 of State money to $3 of Federal-Aid funds.

In view of the subsequent request, we have not obtained advice from the Bureau of the Budget regarding the relationship of this proposed legislation to the program of the President.

Sincerely yours,

E. T. BENSON, *Secretary.*

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, March 11, 1955.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate.

DEAR MR. CHAIRMAN: Reference is made to your letter of February 24, 1955, requesting our comments on S. 1172, 84th Congress, and to your letter of January 28, 1955, requesting our views on S. 756, 84th Congress.

The primary purpose of both of the bills is to make available for wildlife restoration projects the unappropriated receipts in the amount of $13,467,468.61 now carried on the Treasury books in the account "5029 Tax on Firearms, Shells, and Cartridges, Section 3407, Internal Revenue Code." The amount referred to accumulated under the provisions of the act of September 2, 1937, 50 Statutes 917, as amended (16 U. S. C. 669–669j), which authorized the setting aside of taxes on firearms in a special fund in the Treasury to be used for wildlife restoration but did not appropriate such receipts. From the beginning of the program through the fiscal year 1947, definite amounts were appropriated annually by Interior Department appropriation acts. It was during that period that the amount of $13,467,468.61 referred to in the bill was accumulated and such amount has not been appropriated. Interior Department appropriation acts for the fiscal years 1948 through 1951 appropriated amounts equal to the receipts credited to the fund during the fiscal year preceding each act; and the 1951 Appropriation Act, 64 Statutes 693, also permanently appropriated all receipts received in the fiscal year 1951 and thereafter.

The provisions of S. 756 correspond closely in most respects to those of the referred-to act of September 2, 1937, as amended (16 U. S. Code 669 to 669j). Like the said act, S. 756 would authorize appropriation of the funds and require assent by the States to the proposed use thereof. It contains substantially similar provisions as to apportionment of the funds to States and submission of notice by States as to their desire to avail themselves of the benefits of the act together with statements of any pertinent projects proposed. Other provisions

common to the act and to S. 756 are those authorizing cooperation by the Secretary of the Interior with the Territories, Puerto Rico, and the Virgin Islands, and the making of rules and regulations for carrying out the provisions of the act. S. 756 provides for distributing the accumulated receipts over a period of 5 years. However, S. 756 would eliminate the requirement, as to the funds which would thereby be authorized to be appropriated, that the States pay at least 25 percent of the costs of approved projects. Also, there would be eliminated the provision, as to the involved moneys, that not to exceed 8 percent could be used for expenses of administering the act.

In view of the fact that the basic act of September 2, 1937, authorizes appropriation of the funds referred to and that there are few material differences between the provisions of that act and those of S. 756, it is suggested that its results could be attained more simply by appropriating the funds under the existing act, including in the appropriation act such provisions as necessary in order to effectuate any desired changes from the provisions of existing law.

There is suggested for consideration, also, the question whether there is any real need for distribution to the States of the accumulated funds. In that connection, an audit of the Service for the fiscal year 1954 showed that the unobligated balance of funds apportioned to the States at June 30, 1954, amounted to $4,733,029, with unliquidated obligations at that date of $17,285,485. This compared with unobligated balances of $4,436,436 at June 30, 1953, and $7,687,624 at June 30, 1952, and unliquidated obligations of $18,530,175 and $17,747,282 on these dates. Also, a review of approved projects disclosed that at June 30, 1954, there were 10 projects approved prior to June 30, 1951, and 24 projects approved during 1952 which were still uncompleted representing $296,184 of unliquidated obligations. It appears therefrom that the amounts made available in recent years to finance approved projects have been adequate and that the unappropriated receipts referred to in the bill might properly be transferred to the general fund of the Treasury instead of being authorized to be made available for expenditure by the States.

Section 1 of S. 1172 proposes to revise section 2 of the act of September 2, 1937, 50 Stat. 917, as amended (16 U. S. C. 669–669j) by broadening the definition of "wildlife-restoration projects" to include "management exclusive of law enforcement and public relations." The effect of this change would be substantially to increase the scope of items for which Federal aid participation is now permitted by the act. Informal information furnished by the Fish and Wildlife Service is to the effect that the purpose of enlarging the scope of Federal aid participation is to enable Federal aid to be given to the States to build facilities for the use and comfort of hunters, such as access roads, canals, duck blinds, parking areas, and sanitary facilities, in connection with wildlife refuges. The management items might be included in the cost of a new project or be submitted by a State as supplemental to existing completed projects. Also, it might conceivably be of the overall type which would include various and sundry facilities for completed and prospective projects. The costs of the management items involved cannot be estimated with any degree of accuracy although it is believed they will be substantial. However, the management costs will not affect the present formula for computing a State's annual apportionment. The proposed amendment would merely permit the apportionment to purposes other than those now authorized. There is no factual information here upon which to base a recommendation for or against the provision.

Section 2 of S. 1172 proposes to make revenues accruing to the Federal aid to wildlife-restoration fund during the fiscal year available for use by the States during the second fiscal year following the fiscal year of accrual. Under existing law each year's fund appropriation is based upon the preceding fiscal year's tax receipts. This procedure has placed the participating States in the position of providing the required matching funds by anticipating the amount of their Federal apportionments for the fiscal year involved. These planning difficulties would be eliminated if the bill is enacted since each fiscal year's appropriation would be based on the taxes collected during the fiscal year ending 1 full year before the beginning of the fiscal year for which they are made available for expenditure. Fiscal year 1955 taxes would become available for use in 1957, 1956 taxes would be available in 1958, and so on. To provide funds for the fiscal year 1956, the section appropriates for this fiscal year the unappropriated receipts of $13,467,468.61.

Since section 2 would eliminate the planning difficulties of participating States by furnishing them with the actual amount of their Federal apportionment on which to base their matching funds and since the proposed appropriation of

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$13,467,468.61 will apparently be adequate for the fiscal year 1956, thereby eliminating the necessity for appropriating funds for fiscal year 1956 from the general fund in the Treasury, we have no objection to favorable consideration of section 2 of the bill.

Seven carbon copies of this report are enclosed.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics, existing law in which no change is proposed is shown in roman):

ACT OF SEPTEMBER 2, 1937 (CH. 899)

SEC. 8. Maintenance of wildlife-restoration projects established under the provisions of sections 669–669j of this title shall be the duty of the States in accordance with their respective laws: *Provided*, That beginning July 1, 1945, the term "wildlife-restoration project", as defined in section 669a of this title, shall include maintenance of completed projects, but not more than 25 per centum of the total amount apportioned to any State under the provisions of said sections may be expended for such maintenance. *Notwithstanding any other provision of this Act, funds apportioned to a State under this Act may be expended by the State for management (exclusive of law enforcement and public relations) of wildlife areas and resources, but not more than 30 per centum of the total amount apportioned to a State for any fiscal year may be expended for such purpose.*

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Calendar No. 644

84TH CONGRESS, 1st Session | SENATE | REPORT No. 639

TEMPORARY EXTENSION OF CERTAIN HOUSING PROGRAMS, THE SMALL BUSINESS ADMINISTRATION, AND THE DEFENSE PRODUCTION ACT OF 1950

JUNE 27, 1955.—Ordered to be printed

Mr. FULBRIGHT, from the Committee on Banking and Currency, submitted the following

REPORT

[To accompany S. J. Res. 85]

The Committee on Banking and Currency report a joint resolution (S. J. Res. 85) to extend for temporary periods certain housing programs, the Small Business Act of 1953, and the Defense Production Act of 1950, and recommend that the joint resolution do pass.

PURPOSE OF THE JOINT RESOLUTION

Sections 1, 2, and 3 of this resolution are necessary to continue certain programs of the Housing and Home Finance Agency which expire on June 30 or July 1, 1955, until such time as general housing legislation now pending in the Congress is enacted. Four programs are extended for 1 month and are itemized below:

(1) The home improvement and modernization insurance program under title I of the National Housing Act, administered by the Federal Housing Administration, is extended from July 1, 1955, to August 1, 1955. Pending legislation proposes to extend this program for 5 years.

(2) The military housing insurance program under title VIII of the National Housing Act also administered by the Federal Housing Administration is extended from June 30, 1955, to July 31, 1955. Pending legislation modifies this program and extends it for 3 years.

(3) The defense housing and community facilities program enabled by the Defense Housing and Community Facilities and Services Act of 1951 and administered by the Community Facilities Administration and the Federal Housing Administration is extended from July 1, 1955, to August 1, 1955. Pending legislation extends this program for 1 year.

(4) The low-rent public housing program under the United States Housing Act of 1937, administered by the Public Housing Administration, is extended from June 30, 1955, to August 1, 1955. Pending legislation extends this program until such time as 810,000 low-rent public housing units are achieved.

The pending legislation referred to above is S. 2126 (S. Rept. 404) which passed the Senate on June 7, 1955. This measure is now before the Banking and Currency Committee of the House of Representatives, and there is little likelihood that the legislation can be finally considered prior to the present expiration dates of the programs cited above.

Section 4 of the resolution extends the Small Business Act of 1953 for 1 month until July 31, 1955. Under existing law this act would expire on June 30, 1955, and the program of the Small Business Administration would terminate. On June 6, 1955, the Senate passed S. 2127 (S. Rept. 405) which extends this program for 2 years until June 30, 1957. This measure is now before the Banking and Currency Committee of the House of Representatives, and it is unlikely that consideration can be completed prior to June 30, 1955.

Section 5 of the resolution extends the Defense Production Act of 1950 for 1 month until July 31, 1955. This committee today agreed to report a bill which would extend the Defense Production Act for 2 years until June 30, 1957, and it is most unlikely that congressional action can be completed on this measure prior to the expiration of this act on June 30, 1955. Consequently, it is necessary to extend the act for a temporary period until July 31, 1955, by which time the Congress should have completed its consideration of the proposed 2-year extension.

CHANGES IN EXISTING LAW

In the opinion of the committee, it is necessary to dispense with the requirements of subsection 4 of rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate in connection with this report.

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Calendar No. 676

84TH CONGRESS, 1st Session | SENATE | REPORT No. 671

AMENDING THE DISTRICT OF COLUMBIA UNEMPLOYMENT COMPENSATION ACT

JUNE 27, 1955.—Ordered to be printed

Mr. MCNAMARA, from the Committee on the District of Columbia, submitted the following

REPORT

[To accompany S. 1835]

The Committee on the District of Columbia, to whom was referred the bill (S. 1835) to amend the District of Columbia Unemployment Compensation Act, as amended, after full consideration, report favorably thereon with amendments, and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, strike lines 3 to 9, inclusive, and insert in lieu thereof the following:

That (a) section 7 (b) of the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 946), as amended (title 46, ch. 3, D. C. Code, 1951 edition; 68 Stat. 993), is amended to read as follows:

Page 3, redesignate subsections (c), (d), and (e) as (b), (c), and (d), respectively.

Page 3, strike lines 5 to 11, inclusive, and insert in lieu thereof the following:

(c) To qualify for benefits an individual must have (1) been paid wages for employment of not less than $130 in one quarter in his base period, (2) been paid wages for employment in not less than two quarters in such period, and (3) earned during such period wages the total amount of which is equal to at least one and one-half times the amount of his wages for the quarter in such period in which his wages were the highest. Notwithstanding the provisions of clause (3), any otherwise qualified individual the total amount of whose wages during such period is less than the amount required to have been earned during such period under such clause may qualify for benefits if the difference between the amount so required to have been earned and the total amount of his wages during such period does not exceed $70, but the amount of his weekly benefit, as computed under section 7 (b), shall be reduced by $1 if such difference does not exceed $35 or by $2 if such difference is more than $35.

Page 5, line 4, strike "1955." and insert in lieu thereof the following:

1955, and the benefit rights of any individual having a benefit year current on or after the effective date shall be redetermined and benefits for calendar weeks ending subsequent to the effective date shall be paid in accordance with the provisions of the District of Columbia Unemployment Compensation Act as amended by this Act: *Provided*, That no claimant shall have his benefits reduced or denied by redetermination resulting from the application of this provision. All initial and continued claims for benefits for weeks occurring within a benefit year which commences on or after the effective date shall be computed and paid in accordance with the provisions of the District of Columbia Unemployment Compensation Act as amended by this Act.

INTRODUCTION

The Public Health, Education, Welfare, and Safety Subcommittee of your committee considered two proposals, S. 1163 and S. 1835, the former being sponsored by Senator Beall, Senator Mansfield, Senator Neely, and Senator Payne, and the latter sponsored by Senator Morse, Senator Beall, Senator Case (New Jersey), Senator Mansfield, Senator McNamara, Senator Neely, and Senator Payne. The list of sponsors of S. 1835 included all the sponsors of S. 1163, and demonstrated the bipartisan support for the changes that this legislation would make.

Hearings were held on both bills on April 28 and May 4, 1955. Although the original notice of hearings referred only to S. 1163, all witnesses were given adequate opportunity to study the provisions of S. 1835 before being asked to testify. The record was held open for any written statements which witnesses might want to file.

PURPOSE AND SCOPE

S. 1835 provides for three urgently needed changes in the District of Columbia Unemployment Compensation Act:

(1) Increases the maximum weekly benefit amount.

(2) Changes the duration period for all eligible claimants to a uniform maximum period of 26 weeks.

(3) Changes the disqualification provisions to a straight 6-week disqualification with no cancellation of benefits.

The proposed changes with respect to duration of benefits, the disqualification period and the qualifying wage requirement are contained in both bills. It is believed that these changes and the additional amendments contained in S. 1835, which deal with the maximum weekly benefit amount require immediate attention. These proposals are all within the areas which were studied by your committee prior to the 1954 amendments to the District of Columbia Unemployment Compensation Act, and thus do not require prolonged consideration now. These proposed changes have been selected for consideration at this time because of their urgency.

MAXIMUM WEEKLY BENEFIT AMOUNT

The rapid rise in wages since the enactment of the District of Columbia Unemployment Compensation Act makes immediate benefit adjustments imperative if the District of Columbia Act is to provide benefits reasonably related to the present wage levels.

In 1938 when unemployment insurance benefits were first paid in the District of Columbia the maximum weekly benefit amount was $15 a week. This was three-fifths of the average weekly wage in

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covered employment in the District which was then $25.22 Today the maximum weekly benefit is $30; this is less than two-fifths of the average weekly wage in the District of Columbia which is estimated to be between $80 and $85 a week.

As a result of the lag in benefits, too many workers are getting less than 50 percent of their weekly wages. In 1954, 75 percent of claimants were affected by the benefit maximum. In the first quarter of 1955, despite last year's amendment increasing the maximum weekly benefit, 54 percent were still receiving the maximum; thus about one-half were receiving less than 50 percent of the weekly wages they earned when employed.

It should be noted that an increase in the maximum benefit in line with rising wages and living standards is necessary not alone to assure an adequate benefit to the worker for loss of earnings; it is needed, also, to assist the whole community through maintaining the purchasing power of the unemployed. Businessmen, landlords, doctors, and others who furnish goods and services to District of Columbia workers are all dependent in some degree on the continued ability of the unemployed worker to maintain a reasonable level of expenditure.

Where compensation is inadequate to permit maintaining a minimum standard of living, many claimants are forced to supplement their benefits through private charities or State and local public-relief sources. These costs, which should properly be borne by the unemployment-compensation fund, are being shifted to public-assistance funds, the costs of which are paid by the public and the general taxpayer.

The amendment increasing the maximum weekly benefit amount is in line with the recommendations of both President Truman and President Eisenhower.

President Truman proposed Federal standards for State unemployment-insurance laws and consistently supported benefit increases to protect both the individual and the community in time of economic distress.

In his Economic Report to Congress, submitted in 1954 and 1955, President Eisenhower endorsed the goals which this bill attempts to meet. In the 1955 report (p. 56), President Eisenhower recommended that State legislatures increase maximum benefits under their unemployment-compensation laws "so that the great majority of covered workers will be eligible for payments that at least equal one-half their regular earnings."

Secretary of Labor Mitchell spelled out the recommendations of the President in a letter to all State governors, dated February 16, 1954, and in a second letter to State governors dated November 27, 1954. The second letter said in part:

> You will recall the goals suggested by the President for improvement of the benefit provisions of the unemployment-insurance laws. He suggested that the States raise their dollar maximums so that the payments to the great majority of beneficiaries may equal at least half their regular earnings. In order to achieve this goal, it is our belief that the maximum benefit level, which is the principal limiting factor on weekly benefits, should be geared to the average gross earnings of all workers covered by the program, not just of those who are drawing benefits at any particular time. Weekly benefit amounts beneath this maximum should be at least 50 percent of the workers' gross earnings in covered employment.

In the February 16 letter, the Secretary also pointed out that support for the President's recommendations came from the Federal

Advisory Council on Employment Security, a tripartite body representing management, labor, and the public.

(a) Benefits: At its most recent meeting in January the Federal Advisory Council on Employment Security took action supporting the President's recommendations on improving weekly benefits. The Council recommended that in each State, the maximum weekly benefit amount should be equal to at least 60 to 67 percent of the State's average weekly wage.[1]

Under Secretary of Labor Larson testified that, assuming the President's phrase "great majority of beneficiaries" refers to 75 percent of the workers as this committee assumes, then the maximum of 67 percent of the average weekly wage as proposed in this bill is necessary to meet the goal set by the President.

The bill makes the maximum weekly benefit amount a specified percentage (67 percent) of the average wage of all workers covered by the law (computed annually), rather than a fixed dollar amount. Your committee believes that this approach is proper in unemployment compensation, since benefits are related to wages. This approach permits the weekly benefit maximum to reflect automatically the changes in wages which occur in a free and dynamic economic society. It will eliminate continued future demands on the Congress to change the maximum weekly benefit amount in order that it may keep pace with rising wages; at the same time it will automatically lower the maximum benefit if wages should decline. It is both fair and simple and is therefore endorsed by your committee.

In order to permit automatic adjustments in the maximum weekly benefit in line with wage trends, the bill provides for annual computation by the District of Columbia Unemployment Compensation Board of the average weekly wage of workers covered by the law. This computation will be based on reports by employers, including the Federal Government agencies. Earnings paid by these employers to workers during the most recent calendar year will be divided by total employment for the whole period. Since employment is reported for the average week of the month, and earnings are totaled for the month, the bill provides for putting the two figures on a comparable basis before the computation of the average earnings is made. The method provided is: The employment figure is multiplied by 4⅓, the number of weeks per month.

It should be noted that this bill does not provide that all claimants shall receive the maximum weekly benefit amount or that any claimant will receive 67 percent of his own average weekly wage. Neither does it change the limitation in the present law which limits the worker to no more than 50 percent of his weekly wage, or one-twenty-third of his wages in a calendar quarter. As previously pointed out, the committee believes that about 75 percent of the workers covered by the District law will under the bill be able to receive 50 percent of their weekly wage. The 25 percent of the workers whose weekly wages are relatively higher will still be limited to a weekly benefit amount which is the smaller of 50 percent of their own weekly wage or 67 percent of the average weekly wage.

Testimony indicated that certain persons might have substantial high-quarter earnings and still not qualify for benefits under S. 1835 because of the provision that they must earn 1½ times their high-quarter wages in the base year. The purpose of this provision,

[1] Minutes of the Federal Advisory Council, Bureau of Employment Security, January 1954.

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already in the District of Columbia Act, is to assure that the claimant is attached to the labor force. We agree with this principle. However, to reduce the danger that workers may suffer discrimination by a too-rigid procedure, we have included in S. 1835 a step-back procedure such as proposed in S. 1163.

MAXIMUM POTENTIAL DURATION

The bill provides that all claimants who are eligible for benefits will be able to draw no more than 26 weeks of benefits if they remain unemployed for that long a period. During the period of unemployment the worker would of course be required to be able to work, to be available for work and to accept suitable work when offered to him. In short, the benefits will be payable for the full period only if the worker's unemployment is due to the lack of suitable job opportunities.

These provisions of the bill meet the recommendations of the Federal Advisory Council on Employment Security. President Eisenhower stated in his Economic Report of 1955:

> * * * the States are urged to lengthen the term of benefits to 26 weeks for every person who qualifies for any benefit and who remains unemployed that long (p. 56).

Your committee is of the opinion that if unemployment compensation is to achieve its purposes it must protect most qualifying workers for the length of time necessary to secure another job. All persons protected by the system must be given protection for the same maximum period of unemployment just as the formula for weekly benefit amount protects most persons for 50 percent of their wage loss.

This principle of a uniform duration of benefits for all claimants was recognized in the District of Columbia law from the time of its original enactment until last year when Congress enacted the most recent amendments to the District law. While last year's action extended the maximum duration to 26 weeks it did not do so for all claimants. It limited the maximum benefits which could be paid to any individual to one-third of his wages in the base period. The formula in the law operates to limit some claimants to a maximum of only 11 weeks of benefits regardless of the reason for the duration of their unemployment.

It is the opinion of the committee that such a limitation on duration is inequitable. Workers would be penalized whose service during their base period was short, even though they are the workers who are likely to be laid off first and recalled last. Generally, a worker's record of interrupted spells of employment during base period is not due to his lack of attachment to the labor market but rather to his employer's failure to furnish regular work.

It is also the opinion of the committee that the principle of uniform duration of insurance for all workers who qualify for benefits is in accord with the principles of insurance in general and particularly with the principles of insurance against wage loss. Unemployment insurance is not an annuity system. It is insurance for a stated contingency—unemployment—and should be available when the risk occurs. Its coverage should not be dependent on the length of the period for which premiums were paid any more than the amount of fire insurance paid to a person whose home burns down is based on the period of coverage prior to the occurrence of the risk. Workers

covered by workmens' compensation and by temporary disability insurance, all provided by private insurance companies, are eligible to draw benefits for the same length of time even though their prior period of coverage may have varied.

In order therefore to fully carry out its purpose, the District of Columbia unemployment-compensation law should provide a uniform duration of 26 weeks for all eligible claimants.

DISQUALIFICATIONS

Both S. 1835, the reported bill, and S. 1163 provide that the period of disqualification for voluntary quits, discharge for misconduct, and refusal of suitable work shall be 6 weeks. At the present time a person may be disqualified for from 4 to 9 weeks, depending on the judgment of the interviewer with whom the claim is filed, and his future benefit rights are reduced by the number of weeks for which the claimant is disqualified.

The purpose of disqualification provisions in unemployment compensation laws is to protect the fund from claims during a period when the claimant's unemployment is due to his disqualifying act rather than to the lack of suitable job opportunities. A postponement of benefits for a fixed period in case of a disqualifying act by the worker, as provided for in this bill, accomplishes this purpose. At the expiration of the disqualification period, the unemployed worker is in a position no different from that of any other worker who is out of work because of economic conditions. To reduce his benefit rights at that point in addition to having denied him benefits for the fixed period is in effect double jeopardy. It perverts the purposes of disqualification from one of protecting the fund to one of penalizing the claimant.

The precise period of disqualification is a difficult figure at which to arrive. The Federal Advisory Council to the Bureau of Employment Security suggests that 6 weeks with no cancellation is sufficient. Some groups suggest shorter periods, some longer. However, almost all students of unemployment insurance believe that disqualification should not extend past the time when, in a stable labor market, a person would be normally expected to have found another job. In the judgment of this committee, the 6 weeks period meets this test.

An individual who would be disqualified under the terms of this bill would receive no benefits for the week in which he left his work, plus the waiting period of 1 week, plus 6 weeks of imposed disqualification, a total of 8 weeks. This mandatory postponement of benefits, plus the fact that he must be physically able to work and available for work during any week for which he is eligible for benefits, will, we feel, be a sufficient deterrent to the few malingerers who might attempt to use the system for their own purposes.

The bill eliminates the present provision for a variable period of disqualification. Such a variable period has little merit. By definition it fails to recognize the stable purchasing power criterion mentioned above. The purpose of unemployment insurance is to provide insurance against involuntary unemployment and to maintain purchasing power. Denial of benefits should not be used as a disciplinary or a punitive measure. Moreover, the variable period requires the exercise of judgment and interpretation of individual motives by the

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claims taker; such exercise of judgment has no place in the administration of unemployment compensation.

After evaluation of the testimony, and of subsequent materials supplied by the Department of Labor, we feel that the legislation before us in regard to disqualification is fair and equitable and meets reasonable standards.

FINANCING

The District law permits a reduction of employer contribution rates on the basis of individual experience rating below the maximum of 2.7 percent. According to the Bureau of Employment Security of the United States Department of Labor: in 1954, only 6.6 percent of rated employers paid the maximum, and 81.3 percent paid only 0.1 percent; the average rate for all employers was 0.44 percent. Because of increased unemployment beginning in 1953, some employers are now paying at higher rates, and the average has risen to 0.7 percent. The average is still undoubtedly well below the national average and only a small part of the 3 percent tax levied in 1938 and 1939.

District employers for many years had lower contribution rates on the average than most States, and the reserve fund equaled $55.2 million at the end of 1954. This is 12 times total benefit payments that year.

The cost of the improvements we are recommending will depend on the rate of unemployment. The sums paid out will aid the community by bolstering purchasing power if unemployment is heavy. In view of the large reserve and the low rates District employers have been paying, the amendments we recommend will not impose an undue drain on the reserve nor an undue burden on employers, who in no case will pay more than 2.7 percent.

The purpose of the amendment to section 2 of the bill is to provide that all claims filed and being paid under benefit years which have not expired on the effective date of this act shall be redetermined and paid under the new law, provided, that no claimant shall have his benefits reduced or denied by such redetermination. The redetermination will of course be effective only for weeks following the effective date.

There was considerable variance of views expressed by the witnesses on many provisions of the bill. Your committee believes that the bill as amended, although not completely satisfactory to all the interested parties, gives recognition to all points of view presented. It achieves a great improvement over the existing law and meets all of the recommendations of President Eisenhower and his administration for improving unemployment compensation law.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law in the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

(49 Stat. 946)
(68 Stat. 993)

AMOUNT AND DURATION OF BENEFITS

SEC. 7. (a) On and after January 1, 1938, benefits shall become payable from the benefit account of the District unemployment fund. All benefits shall be paid through employment offices, in accordance with such regulations as the Board may prescribe.

[(b) Except as provided in section 7 (c), an individual's weekly benefit amount shall be the amount in column (B) of the table in this subsection on the line on which, in column (A), there appears his total wages for employment paid to such individual by employers during that quarter of his base period in which such wages were the highest.]

[TABLE A

[High-quarter wages (col. A)	Basic weekly benefit (col. B)	Minimum qualifying wages (col. C)
$130.00 to $184	$8	$276
$184.01 to $207	9	310
$207.01 to $230	10	345
$230.01 to $253	11	379
$253.01 to $276	12	414
$276.01 to $299	13	448
$299.01 to $322	14	483
$322.01 to $345	15	517
$345.01 to $368	16	552
$368.01 to $391	17	586
$391.01 to $414	18	621
$414.01 to $437	19	655
$437.01 to $460	20	690
$460.01 to $483	21	724
$483.01 to $506	22	759
$506.01 to $529	23	793
$529.01 to $552	24	828
$552.01 to $575	25	862
$575.01 to $598	26	897
$598.01 to $621	27	931
$621.01 to $644	28	966
$644.01 to $667	29	1,000
$667.01 and over	30	1,035]

(b) The weekly benefit amount of any individual qualified therefor under section 7 (c) shall be an amount equal to the lesser of the following: (1) one twenty-third of the amount of his earnings for the quarter in his base period in which his earnings were the highest, or (2) 67 per centum of the average weekly earnings of all individuals performing service which constitutes employment (as defined in section 1 (b)) and of all individuals performing service which, if such service were not performed in the employ of the United States or of any wholly owned instrumentality thereof, would constitute employment (as defined in section 1 (b)) for the latest year for which such average weekly earnings have been computed. Such average weekly earnings shall be computed annually on the basis of reports of earnings and employment by all employers and by the United States, and shall be arrived at by dividing the total earnings paid to all individuals referred to in clause (2) of this subsection during the last completed calendar year for which reports have been received by a quantity equal to four and one-third times the total monthly employment of such individuals for such period. For the purposes of this subsection the term "earnings" shall have the same meaning as that assigned to such term in section 1 (d). All departments, agencies, and wholly owned instrumentalities of the United States shall submit reports to the Board containing such information as may be necessary to make the determination required by this subsection.

[(c) To qualify for benefits an individual must have been paid wages for employment in his base period totaling not less than the amount in column (C) of the table in section 7 (b) on the line on which, in column (B), there appears his weekly benefit amount, and such wages must have been in at least two calendar quarters in his base period: *Provided*, That if an individual during his base period has not been paid such an amount, but has been paid wages in more than one calendar quarter totaling not less than the amount appearing on one

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of the lines in column (C) above, he can qualify for benefits and his weekly benefit amount shall be the amount appearing in column (B) on the line for which the individual qualifies for benefits in column (C).]

(c) *To qualify for benefits an individual must have (1) been paid wages for employment of not less than $130 in one quarter in his base period, (2) been paid wages for employment in not less than two quarters in such period, and (3) earned during such period wages the total amount of which is equal to at least one and one-half times the amount of his wages for the quarter in such period in which his wages were the highest. Notwithstanding the provisions of clause (3), any otherwise qualified individual the total amount of whose wages during such period is less than the amount required to have been earned during such period under such clause may qualify for benefits if the difference between the amount so required to have been earned and the total amount of his wages during such period does not exceed $70, but the amount of his weekly benefit, as computed under section 7 (b), shall be reduced by $1 if such difference does not exceed $35 or by $2 if such difference is more than $35.*

(d) Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to twenty-six times his weekly benefit amount [or thirty-three and one-third per centum of the wages for employment paid to such individual by employers during his base period, whichever is the lesser]: *Provided*, That such total amount of benefits, if not a multiple of [$1] *one dollar* shall be computed to the next higher multiple of [$1] *one dollar*.

(68 Stat. 994)

SEC. 10. (a) An individual who has left his most recent work voluntarily without good cause, as determined by the Board under regulations prescribed by it, shall not be eligible for benefits with respect to the week in which such leaving occurred and with respect to [not less than four nor more than nine] *the six* consecutive weeks of unemployment which immediately follow such *week*. [week, as determined by the Board in such case according to the seriousness of the case. In addition such individual's total benefit amount shall be reduced in a sum equal to the number of weeks of disqualification multiplied by the weekly benefit amount.]

(b) An individual who has been discharged for misconduct occurring in the course of his most recent work proved to the satisfaction of the Board shall not be eligible for benefits with respect to the week in which such discharge occurred and for [not less than four nor more than nine weeks of consecutive unemployment immediately following such week, as determined by the Board in such case according to the seriousness of the misconduct. In addition such individual's total benefit amount shall be reduced in a sum equal to the number of weeks of disqualification multiplied by his weekly benefit amount.] *the six weeks of consecutive unemployment immediately following such week.*

(c) If an individual otherwise eligible for benefits fails, without good cause as determined by the Board under regulations prescribed by it, either to apply for new work found by the Board to be suitable when notified by any employment office, or to accept any suitable work when offered to him by any employment office, his union hiring hall, or any employer direct, he shall not be eligible for benefits with respect to the week in which such failure occurred and with respect to [not less than four nor more than nine] *the six* consecutive weeks of unemployment which immediately follow such *week*. [week, as determined by the Board in such case according to the seriousness of the refusal. In addition such individual's total benefit amount shall be reduced in a sum equal to the number of weeks of disqualification multiplied by the weekly benefit amount.] In determining whether or not work is suitable within the meaning of this subsection the Board shall consider (1) the physical fitness and prior training, experience, and earnings of the individual, (2) the distance of the place of work from the individual's place of residence, and (3) the risk involved as to health, safety, or morals.

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Calendar No. 677

84TH CONGRESS, 1st Session } SENATE { REPORT No. 672

CHANGING THE EFFECTIVE DATE OF CERTAIN PROVISIONS OF THE ACT OF SEPTEMBER 30, 1949

JUNE 27, 1955.—Ordered to be printed

Mr. JOHNSTON of South Carolina, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany S. 59]

The Committee on Post Office and Civil Service, to whom was referred the bill (S. 59) to amend the Civil Service Retirement Act of May 29, 1930, as amended, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

PURPOSE

S. 59 would make the amendment of September 30, 1949, to section 4 (b) of the Retirement Act effective April 1, 1948, instead of September 30, 1949. The change in effective dates is required in order to remove an inequity with respect to employees who retired between April 1, 1948, and September 30, 1949, as compared with employees who retired subsequent to September 30, 1949.

EXPLANATION

The Civil Service Retirement Act, as amended effective April 1, 1948, authorizes a husband, at the time of his retirement, to elect a survivorship annuity payable to his widow equal to 50 percent of the annuity otherwise payable to him. To obtain the benefit of this provision, the husband was required to take a reduction of 10 percent in the annuity payable to him. The act of September 30, 1949, reduced the deduction on the first $1,500 of the husband's annuity from 10 to 5 percent for those who retired after such date. Accordingly, husbands who retired between April 1, 1948, and September 30, 1949, and who elected a survivorship annuity for their widows suffered a reduction of $150 on the first $1,500 of their annuities, whereas, husbands who retired subsequent to September 30, 1949, had to take

a reduction of only $75 on the first $1,500 of their annuities to obtain the same benefit. S. 59 would correct this inequity in the future but not retroactively by requiring the same reduction in the annuity of male employees who retired during the period from April 1, 1948, to September 30, 1949, and who elected survivorship benefits as is made in the case of male employees who retired subsequent to September 30, 1949, and who similarly elected survivorship benefits.

AMENDMENTS

The committee amendments to S. 59 are of a technical nature to assure that the only change made in the act of September 30, 1949, is with respect to survivorship benefits of male employees. S. 59 makes no changes of any kind with respect to the survivorship benefits of female employees who for the first time received such rights under the act of September 30, 1949.

AGENCY REPORTS

Following are agency reports on S. 59 as reported.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, March 18, 1955.

Hon. OLIN D. JOHNSTON,
Chairman, Committee on Post Office and Civil Service,
United States Senate.

DEAR MR. CHAIRMAN: Receipt is acknowledged of your letter of February 25, 1955, enclosing a copy of S. 59, and requesting our comments thereon.

The bill would make the amendment to the Civil Service Retirement Act by the act of September 30, 1949, effective April 1, 1948, instead of September 30, 1949, but provides that any increase in annuities resulting therefrom would not be payable for any period prior to the first day of the first month which begins after the date of its enactment.

Section 4 of the act of February 28, 1948 (62 Stat. 49), effective April 1, 1948, authorizes a husband, at the time of his retirement, to elect an annuity payable to his widow equal to 50 percent of the annuity otherwise payable to the husband but requires a reduction of 10 percent of the annuity payable to the husband. The act of September 30, 1949, Public Law 310, amended this section by substituting for the 10 percent a requirement for reduction of 5 percent of the first $1,500 of the retirement annuity plus 10 percent of the balance. Since there is nothing in that act to make it effective retroactively, it became effective only with respect to annuities beginning on and after its date. That created a difference between annuities beginning between April 1, 1948, and September 30, 1949, and those beginning thereafter amounting to $75 a year on annuities of $1,500 or more. S. 59 proposes to correct this inequality with respect to future payments by making the act of September 30, 1949, effective April 1, 1948.

We have no available information concerning the number of annuitants which would be affected by the proposed legislation, but we perceive no reason for objecting to it.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

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EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington 25, D. C., June 15, 1955.

Hon. OLIN D. JOHNSTON,
Chairman, Committee on Post Office and Civil Service,
United States Senate, Washington 25, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of February 25, 1955, requesting the views of the Bureau of the Budget on a bill, S. 59, to amend the Civil Service Retirement Act of May 29, 1930, as amended.

The bill would make retroactive to April 1, 1948, the provisions of an amendment of section 4 (b) of the Retirement Act which was approved on September 30, 1949, and effective on October 1, 1949. Any increases in existing annuities resulting from such retroactive action would be payable only for the period beginning with the first day of the first month following enactment of th bill.

The amendment of September 30, 1949, extended to each retiring married female employee the privilege of naming her husband to receive a survivor annuity in event of her death similar to the annuities which retiring male employees were able to provide for their wives through an amendment of April 1, 1948. In order to provide such survivor annuities, retiring employees had to elect to receive reduced annuities for themselves. The amendment of September 30, 1949, also changed the formula for computing the reduction in the annuities of male and female employees and enabled employees retiring thereafter to have less of a reduction in their annuities than those who retired prior to enactment of the amendment. The saving amounted to 5 percent of the first $1,500 of annuity.

Enactment of S. 59 would enable certain female employees who retired between April 1, 1948 and October 1, 1949, to create survivor annuities for their husbands. It would also enable certain male employees who retired during that period to have their reduced annuities increased.

It is unfortunate that when changes in retirement legislation, such as those effected by the amendment of September 30, 1949, are made effective as of a certain date, some persons may fail to be eligible for new benefits because their claims to benefits were settled at some prior date or because their claims were based on service which occurred in some prior period. Each increase in benefits or change in retirement legislation creates new situations where eligibility for still other groups is defeated, often by short periods of time. Action to make the benefits of the amendment of September 1, 1949, retroactive to April 1, 1948, would still discriminate against employees who retired prior to April 1, 1948. The only alternative is to make changes in benefits indefinitely retroactive into the past. The Bureau of the Budget does not endorse such action since it would create serious problems of administration and increase the costs of the retirement program at a great rate.

For these reasons the Bureau of the Budget believes there is no justification for enactment of S. 59. We believe that this view accords with the recommendations of the Committee on Retirement Policy for Federal Personnel. In part 5 of its report to the Congress (S. Doc. No. 89, 83d Cong.) the committee concludes that the "general rule should be that payments made from such adjustments (in retirement benefits) should be prospective only."

Accordingly, the Bureau recommends that your committee not give favorable consideration to S. 59.

Sincerely yours,

HAROLD PEARSON, *Assistant Director.*

UNITED STATES CIVIL SERVICE COMMISSION,
Washington 25, D. C., June 15, 1955.

Hon. OLIN D. JOHNSTON,
Chairman, Committee on Post Office and Civil Service,
United States Senate.

DEAR SENATOR JOHNSTON: I am referring further to your letter of February 25, 1955, relative to S. 59, a bill to amend the Civil Service Retirement Act of May 29, 1930, as amended.

Under the terms of the bill, the amendment approved September 30, 1949, to section 4 (b) of the Retirement Act would be made retroactive so as to cover the cases of employees who retired on or after April 1, 1948.

Under the law in effect prior to the cited amendment, a married male employee retiring because of having attained the superannuation or optional retirement age

or on account of disability could accept a reduced annuity and name his wife to receive a continuing annuity benefit after his death. The reduction in such case amounted to 10 percent of the life annuity otherwise payable and an additional three-fourths of 1 percent of such life annuity for each full year the named wife was under age 60 at time of the employee's retirement, the total reduction not to exceed 25 percent. The surviving widow's benefit amounted to one-half of the full life annuity rate otherwise due the retiring employee.

Under the amendment, the privilege of naming a survivor annuitant was extended also to a married female employee, giving her the same privilege as regards providing survivorship benefits for her husband upon her death. The amendment also changed the computation of annuity applicable to both male and female employees selecting this type of benefit. Since September 30, 1949, so much of the retiring employee's annuity as does not exceed $1,500 is reduced by 5 percent and the remainder of the annuity by 10 percent, and the total annuity by the three-fourths of 1 percent item referred to above, the maximum reduction remaining at 25 percent.

The Commission does not favor retroactive application of statutes unless equity and good conscience demand such action. We can find no such compelling reasons for this proposal.

The amendment of September 30, 1949, with which the Commission concurred, was a liberalization of the benefit structure of the act intended to operate prospectively. It serves one of the basic purposes of a staff retirement system, namely, it offers a further inducement to well-qualified people to enter and to make a career of the Federal service. No such purpose is served when a liberalization is applied retroactively to individuals who have already retired. Such retroactive application, as proposed by this bill, would be in the nature of a gift over and above the benefits provided by the law under which the affected individuals served and under which they retired.

By the act of July 16, 1952, Congress created the Committee on Retirement Policy for Federal Personnel and directed that it study the various Federal and District of Columbia retirement systems. In its report dated June 29, 1954, to the legislative body, this Committee made the following recommendation:

"Whether annuity adjustments, or changes in benefit provisions, should be prospective or retroactive should be decided in light of the particular circumstances. The general rule should be that payments made from such adjustments should be prospective only."

There are now on the roll about 5,600 annuitants who would receive increases under the bill. The maximum annual increase is $75; the average is about $64. The cost of the bill, which would fall entirely on the Government, would be approximately $3,300,000. This is the estimated amount required to pay these increases during the remaining lifetime of the annuitants who would receive them.

The Commission recommends adverse action on this proposal.

The Bureau of the Budget advises that there would be no objection to the submission of this report to your committee.

By direction of the Commission:

Sincerely yours,

PHILIP YOUNG, *Chairman.*

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Calendar No. 689

84TH CONGRESS, 1st Session | SENATE | REPORT No. 684

TEXAS CITY DISASTER

JUNE 27, 1955.—Ordered to be printed

Mr. DANIEL, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1077]

The Committee on the Judiciary, to which was referred the bill (S. 1077) to provide for settlement of claims for damages resulting from the disaster which occurred at Texas City, Tex., on April 16 and 17, 1947, having considered the same, reports favorably thereon an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

AMENDMENT

Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Texas City Claims Act".

NECESSITY FOR LEGISLATION

SEC. 2. As a result of evidence adduced before various committees of the Senate and the House of Representatives, the Congress hereby finds that—

(1) The catastrophe known as the Texas City disaster of 1947, in which over 570 persons were killed, 3,500 persons were injured, and great property losses occurred, was the result of explosions of ammonium nitrate fertilizer on board vessels destined for France as a part of this Nation's program of foreign aid to various war-ravaged and famine-stricken areas overseas.

(2) The two shiploads of ammonium nitrate fertilizer exploding at Texas City, Texas, on April 16 and 17, 1947, had been produced and distributed at the instance, according to the specifications, and under the control of the United States, and despite the highly explosive nature of the fertilizer, it was not so labeled or marked to warn those who conducted its handling and loading.

(3) The Congress recognizes and assumes the equitable and compassionate responsibility of the United States for the damages sustained by reason of these explosions and fires and hereby provides the procedure by which the amounts shall be determined and paid.

PROCEDURE ON CLAIMS

SEC. 3. (a) That exclusive and special jurisdiction be, and the same is hereby conferred upon the United States District Court for the Southern District of Texas, notwithstanding any prior determination, or any statute of limitations, to hear, determine, and render judgment for the damages suffered for property loss, death, and personal injuries, resulting from the explosions and fires at Texas City, Texas, on April 16 and 17, 1947, commonly referred to as the "Texas City disaster".

(b) The United States District Court for the Southern District of Texas, with the aid of the masters appointed as provided for herein, shall receive evidence of, investigate, and allow and fix the amount to be awarded in each of the claims for damages against the United States sustained by individuals, firms, companies, associations, and corporations as a result of the Texas City disaster, subject to exceptions and limitations hereinafter provided.

(c) Under such rules as the senior judge of the United States District Court for the Southern District of Texas may promulgate, the court may appoint such number of masters, commissioners, and clerical assistants, on a temporary basis, as may be necessary to determine and report the amounts due under each suit filed, it being the desire and purpose of the Congress that the United States District Court for the Southern District of Texas appoint as many masters and commissioners as shall be sufficient in number to avoid any impairment of the regular work of that court. The masters or commissioners so appointed shall receive reasonable fees, to be fixed by the court, not to exceed $50 per diem each, such fees to be taxed by the Court against the United States Government as costs to be included as a separate item in each judgment entered and certified to the Secretary of the Treasury for payment in accordance with Sec. 7 (b), and the compensation of clerical assistants so appointed shall be fixed by the Director of the Administrative Office of the United States Courts without regard to the Classification Act of 1949, as amended. Such masters, commissioners, and clerical assistants shall be reimbursed for necessary travel and subsistence expenses incurred by them while traveling on official business, in accordance with regulations promulgated by the Director of the Administrative Office of the United States Courts. Appropriations for salaries of supporting personnel and for travel and miscellaneous expenses contained in the Judiciary Appropriation Act, 1956, are hereby made available for the payment of the fees, compensation, and expenses authorized to be paid under this subsection, and there are hereby authorized to be appropriated such additional amounts as may be necessary for such purposes.

SEC. 3. (a) The United States District Court for the Southern District of Texas, with the aid of the masters and commissioners provided for in section 2 (c), shall limit itself to the determination of (1) the amount of damages sustained by each claimant and to be paid pursuant to this Act, and (2) the individuals, firms, companies, associations, legal representatives, and corporations entitled to receive the same, it being the intention and purpose of this Act, and of the Congress, to recognize and assume the equitable and compassionate responsibility and liability for the damages sustained at Texas City as a result of that disaster on April 16 and 17, 1947, and to submit only to the judicial determination of the United States District Court for the Southern District of Texas the damages to be fixed and allowed in each suit filed.

(b) The United States, as the defendant, may appear in any and all proceedings before the United States District Court for the Southern District of Texas, and any hearings held by that court, or the masters and commissioners provided for, and oppose the grant and entry of any judgment and the amount of damages to be awarded, if any, by the court, subject to the limitations contained in subsection (a) of this section.

SEC. 4. (a) A copy of the petition in each suit against the United States filed under this Act shall, within twenty days after the filing thereof, be served by delivery thereof to the office of the United States attorney for the Southern District of Texas. Any reply or pleading in response to any such petition so filed shall be presented and filed with the clerk of the court within twenty days after service thereof on the office of the United States attorney.

(b) Prior to the expiration of sixty days after the effective date of this Act, the United States District Court for the Southern District of Texas shall promulgate and publish special rules of procedure for handling the suits to which this Act applies. Unless otherwise in conflict with such special rules, the rules of civil procedure, and the local rules of the Southern District of Texas, as amended, shall be controlling in the handling of such suits.

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(c) The United States District Court for the Southern District of Texas, with the aid of the masters provided for, shall determine and fix damages, if any, in the case of each suit presented, within twelve months from the date on which the claim is submitted.

LIMITATIONS AND EXCEPTIONS

SEC. 5. (a) No judgment shall be allowed in any suit unless, prior to the expiration of one hundred and eighty days after the effective date of this Act, the claimant shall have filed his suit in writing with the United Stats District Court for the Southern District of Texas, in accordance with the rules prescribed by that court, or the rules of civil procedure and local rules where not in conflict with any special rules promulgated by the court.

(b) No judgment for recovery on any damages or any claim filed shall be entered by the United States District Court for the Southern District of Texas for payment under this Act unless it shall have first been found by the court that such a claim on which a judgment is entered was a part of a civil action filed against the United States in a United States district court prior to April 25, 1950: *Provided*, That the United States district court, for good cause shown by evidence presented, may waive the failure of filing a claim prior to April 25, 1950, where it is shown that the claimant, because of infancy, insanity, or other legal disability, was unable to bring such civil action.

(c) Claims for death, personal injuries, and property damage, made by individuals, firms, companies, associations, and corporations, other than insurance companies, shall be limited to actual damage sustained, as determined by the laws of the State of Texas, less any payment received by the claimant from an insurance company. The term "an insurance company" as used herein means any insurance corporation, firm, or association, which, under the laws of the State of Texas, has a right of subrogation, or which would have such right except for this subsection. No insurance company shall have any right to receive any part of any claim approved under the foregoing provisions of this Act. No part of any judgment entered under the provisions of this subsection shall be paid over to any insurance company, and whoever violates the provisions of this subsection shall be fined not to exceed $5,000.

SEC. 6. (a) Any final judgment entered by the United States district court, fixing and awarding money damages on claims filed under this Act, shall be subject to review on appeal as to the extent of such damages so awarded, and as to the individuals, firms, companies and legal representatives, and corporations entitled to receive the same, in the same manner and to the same extent as other judgments of the United States district courts: *Provided, however*, That no appeal may be taken on any issue of liability of the United States for such damages resulting from the Texas City disaster.

SEC. 7. (a) The Attorney General, acting through the United States district attorney for the southern district of Texas, may negotiate, compromise, or settle any suit cognizable under this Act, provided the same is approved by the court and entered as an agreed judgment.

(b) Each and every final judgment certified by the United States District Court for the Southern District of Texas pursuant to this Act shall be paid by the Secretary of the Treasury out of the moneys in the Treasury not otherwise appropriated.

(c) Any payment under the provisions of this Act of any judgment so reported shall be in full settlement and discharge of all claims against the Government of the United States made by the particular claimant in the suit in which the judgment so certified was entered.

SEC. 8. (a) The Secretary of the Treasury, before paying any judgments certified to him, shall require of, and receive, from the claimants, persons, firms, corporations, and legal representatives awarded any part of the damages found by the district court judgment, an assignment to the United States to the extent of the payment to be made by the Secretary of any right of action arising out of the Texas City disaster, which such parties participating in the judgment award may have against a third party.

SEC. 9. (a) The United States District Court for the Southern District of Texas, with the aid of the masters and commissioners provided for herein, shall, as a part of such judgment, award, or settlement, determine and allow reasonable attorneys' fees which shall not exceed 10 per centum of the amount so recovered, to be paid out of, but not in addition to, the amount of the judgment awarded, to the attorneys of record representing the claimants and parties named in said judgment. Any attorney who charges, demands, receives, or collects for services rendered in connection with such a claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than $2,000 or imprisoned not more than one year, or both.

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PURPOSE

The general purpose of the bill, as amended, is to afford relief to the families of the 570 persons who were killed and to those people who suffered personal injuries or property damage as a result of the explosions and fires which occurred in Texas City, Tex., on April 16 and 17 of 1947.

STATEMENT

A similar bill, H. R. 9785, passed the Senate in the 83d Congress.

House Resolution 296 of the 83d Congress, 1st session, sponsored by Hon. Clark Thompson of Texas, directed the House Committee on the Judiciary, acting as a whole or by subcommittee, to make a full and complete investigation and study of the merits, if any, of all claims against the United States for compensation for property damage, personal injuries, and death alleged to have been caused by the explosions which occurred at Texas City, Tex., on April 16 and 17, 1947. Representative Chauncey Reed, then chairman of the Committee on the Judiciary, appointed a special subcommittee composed of Representatives Edgar A. Jonas, of Illinois, chairman; DeWitt Hyde, of Maryland; and Thomas J. Lane, of Massachusetts to proceed under this resolution.

The report of that special subcommittee was unanimously adopted by the full committee. The special subcommittee in its investigation conducted hearings for 3 days at Galveston and Texas City, Tex. In addition, it had at its disposal for study and use, the record of the trial court in the Dalehite case—a test case relating to the disaster—consisting of 39 volumes and over 33,000 pages of testimony and exhibits. It also had the views of the Department of Justice transmitted by letter dated January 4, 1954.

For reasons to be stated later in the report, the House committee was of the considered opinion, concurred in by the corresponding Senate committee and the Senate, that the United States Government was responsible for the explosions and the resulting catastrophe at Texas City; that the disaster was caused by forces set in motion by the Government, completely controlled or controllable by it. It recommended that Congress enact appropriate legislation to compensate the innocent victims who not only were incapable of contributing to the disaster but, because of the suddenness and force of the explosions, could not escape it.

Because of the enormity of the disaster and the great number of claims involved, the committee adopted the procedure of determining first whether negligence and responsibility therefor existed on the part of the Federal Government and then, if the responsibility was found to exist, to promulgate a plan whereby, at some later date, the individual damages suffered by each claimant could be determined and settled.[1]

INTRODUCTORY STATEMENT

On April 16 and 17, 1947, a manmade disaster occurred in Texas City, Tex., of almost unbelievable proportions. Loaded bags of

[1] There were over 8,000 claims filed in the Federal district court under the Federal Tort Claims Act in the Texas City disaster litigation. Approximately 1,510 claims were based on wrongful death, approximately 988 on personal injury claims, and approximately 5,987 on property damage or destruction claims. It would be manifestly impracticable for a committee of Congress to hear and ascertain the amount claimed by each individual claimant.

ammonium nitrate fertilizer stowed for overseas shipment in the holds of two ships at the docks in that city blew up. The disaster occurred as the result of the explosion of an inherently dangerous material manufactured, packaged, shipped, and controlled by the United States Government under the label of fertilizer. Over 570 persons perished in the disaster, and about 3,500 more suffered injuries. Damage to private properties ran into millions of dollars.

The committee, as will be pointed out in this report, is of the firm belief that the United States Government is wholly responsible for this catastrophe. The fertilizer which blew up in Texas City was part of a fertilizer project through which the United States was seeking to carry out a program of foreign aid to various war-ravaged and famine-stricken areas overseas. While there were many who had a part in the production, shipping, and handling of this fertilizer, it was nevertheless the United States Government which conceived and initiated the foreign-aid program and it was the Government which controlled or had the power to control all phases of the project right from the manufacturing stage to the final delivery of the fertilizer at its destination.

The dissenting opinion of Mr. Justice Jackson in *Dalehite* v. *United States* (346 U. S. 15, 48), a test case relating to this disaster, aptly stated the responsibility of the United States Government in the following language:

> This was a man-made disaster; it was in no sense an "act of God." The fertilizer had been manufactured in Government-owned plants at the Government's order and to its specifications. It was being shipped at its direction as part of its program of foreign aid. The disaster was caused by forces set in motion by the Government, completely controlled or controllable by it. Its causative factors were far beyond the knowledge or control of the victims; they were not only incapable of contributing to it, but could not even take shelter or flight from it.

Mr. Justice Reed, in speaking for the majority of the Court, stated:

> This fertilizer had been produced and distributed at the instance, according to the specifications and under the control of the United States.

HISTORY OF COURT LITIGATION

Before going into a discussion of the merits of the issues and problems relating to the Government's responsibility for this catastrophe, it may be well to consider at the outset, the history and status of the matter when it was presented to the Congress for investigation and study. The committee believes this to be necessary because the belief has been expressed that the persons who suffered damage in the disaster, having litigated their claims under the Federal Tort Claims Act and having had their day in court and lost, should not now petition Congress as a further remedy. This belief, however, is far from being correct.

It is a matter of record that subsequent to the disaster over 300 actions against the United States were instituted in the names of some 8,500 claimants under the Federal Tort Claims Act for death, personal injury, and property damages arising out of the disaster.

After those suits were filed, the parties, in order to simplify matters and to eliminate repetition of questions and legal issues common to all litigants, consolidated their cases with the approval of the United States District Court for the Southern District of Texas under civil action No. 787, *Elizabeth Dalehite et al.* v. *United States* (1950). The

plan of procedure adopted by that trial court was to determine first whether negligence and liability existed on the part of the Federal Government and then, if the liability was found, to ascertain at some later date, the amount of damages each individual claimant suffered.

Findings of district court establish liability of Government

After a trial of the issues, the district court judge, sitting without a jury, found negligence on the part of the Government and rendered judgment in favor of the plaintiffs. The basic ground for the district court's findings is expressed in its "Findings of Fact" that the—

> record discloses blunders, mistakes, and acts of negligence, both of omission and commission, on the part of defendant (the U. S. Government) its agents, servants, and employees, in deciding to begin the manufacture of this inherently dangerous fertilizer. And from the beginning of its manufacture on down to and after the day of the Texas City disaster, it discloses such disregard of and lack of care for the safety of the public and of persons manufacturing, handling, transporting, and using such fertilizer as to shock one. When all the facts in this record are considered, one is not surprised by the Texas City disaster, i. e., that men and women, boys and girls, in and around Texas City, going about their daily task in their homes, on the streets, in their places of employment, etc., were suddenly and without warning killed, maimed, or wounded, and vast property damage done. The surprising thing is that there were not more of such disasters.

The court found that the United States was negligent also in manufacturing the fertilizer, in selection of the coating used, and in the manner in which it prepared the fertilizer for shipment and that—

> each shipment of such fertilizer was a dangerous public and private nuisance from the time it was manufactured.

Reversal of district court on the law by appellate courts

On appeal, however, the Court of Appeals for the Fifth Circuit unanimously reversed (197 F. 2d 771) and the United States Supreme Court, by a division of 4 judges to 3, 4 being a majority since 2 judges did not sit, affirmed the decision of the court of appeals (346 U. S. 15). The Supreme Court through its majority decision decided that the acts of negligence found by the district court could not give it jurisdiction to entertain the lawsuits, because the claims were based upon the exercise of a "discretionary function" within the meaning of the Federal Tort Claims Act. To put it another way, the Supreme Court held that the Federal Tort Claims Act did not apply to the type of governmental action involved in the Texas City disaster litigation.

Background and pertinent provisions of Federal Tort Claims Act

Prior to 1946, which was the year of the passage of the Federal Tort Claims Act, persons seeking compensation for tort claims against the United States Government had, for the most part, only one remedy against the Federal Government and that was to petition Congress for relief. The Federal Government had long followed the accepted rule of sovereign tort immunity, that is, that no action lies against the Government of the United States unless Congress has authorized it. The only relief available to a claimant was by way of a private bill to Congress. However, the private bill method of petitioning Congress for relief was notoriously clumsy, and in recent years the tremendous volume of private legislation was impairing the efficiency of both Congress and the President (H. Doc. 562, 77th Cong., 2d sess.). Some simplified recovery procedure for the great mass of claims was imperative. As a solution Congress enacted the Federal Tort Claims Act affording access to the Federal courts for tort claims within its scope (28 U. S. C., secs. 1346, 2671–2680).

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Government's liability for negligence similar to that of private person

Congress, through this act, waives the Government's immunity from actions for injury to persons and property occasioned by the tortious conduct of its agents and employees carrying out its work. The act defines this tort liability of the Government as similar or analogous to that of a private person. Section 1346 (b) thereof imposes liability on the Government—

> for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, *under circumstances where the United States, if a private person, would be liable to the claimant* in accordance with the law of the place where the act or omission occurred. [Emphasis supplied.]

Act contains exception; no governmental liability for performance of "discretionary function"

Section 2680 (a) of the act, however, notes an exception from the scope of the provision quoted above. That provision does not apply to—

> Any claim * * * based upon the exercise or performance or the failure to exercise or perform a *discretionary function* or duty on the part of a Federal agency or an employee of the Government, *whether or not the discretion be abused.* [Emphasis supplied.]

Decision of Supreme Court

It was this latter section which the Supreme Court invoked as the legal basis for denying the litigants relief under the Federal Tort Claims Act. The Court pointed out that the acts of "negligence" found by the district court were performed in the exercise of a discretionary function or duty and that section 2680 (a) assured protection for the Government against tort liability for errors made in the exercise of discretionary functions. This is made clear by the following language appearing in the majority opinion (p. 32):

> An analysis of section 2680 (a), the exception with which we are concerned, emphasizes the congressional purpose to except the acts here charged as negligence from the authorization to sue.

The Court also stated (p. 24):

> Even assuming their correctness arguendo, though, it is our judgment that they do not establish a case within the act. This is for the reason that as a matter of law the facts found *cannot give the district court jurisdiction* of the cause under the Tort Claims Act. [Emphasis supplied.]

It is unnecessary to analyze the Court's decision for the purpose of determining what exactly the words "discretionary function" mean and what acts they encompass. It is sufficient, for the purposes of this report, to point out that the Court based its decision upon the construction and interpretation of those words, and held as a matter of law that the courts could not take jurisdiction of the claims. The Supreme Court did not go into the question of whether or not the Government was at fault; it did not hold the Government free from negligence. It simply held that even if it was to assume that the Government was negligent there could still be no recovery because the courts, on account of the wording of the Tort Claims Act, were without power to grant relief.

Thus it is clear that the claimants had no day in court. Rather, because of the majority decision of the Supreme Court, they were put into the same position they would have been in if there never had been

a Tort Claims Act, namely, a position of seeking relief directly from the Congress. No doubt the House of Representatives in unanimously adopting House Resolution 296, 83d Congress, which authorized its Judiciary Committee to investigate the Texas City disaster claims, concluded that, because of the Supreme Court decision, substantial justice may not have been afforded to all those who sustained damage either by death or injury to person or property as a result of the catastrophe.

Congressional action would not invalidate Supreme Court decision

It should be emphasized however, that, in adopting House Resolution 296, Congress was not attempting to supersede or invalidate the controlling decision of the Supreme Court, laid down in the Dalehite case. Congress, prior to the passage of the Tort Claims Act, repeatedly entertained claims and concerned itself with legislation which provided relief for parties in situations analogous to that submitted to the committee for investigation. In addition, since the passage of the Tort Claims Act, Congress has invariably exercised its jurisdiction to legislate when it was satisfactorily established that for compassionate reasons or in equity and in good conscience remedial legislation was necessary to fill a void created by existing law.

With this statement of the Supreme Court's construction of the Tort Claims Act and its inapplicability to the situation herein, we turn to the question of the claimed responsibility of the United States Government for the Texas City disaster.

UNITED STATES GOVERNMENT'S FOREIGN AID FERTILIZER PROGRAM FOR OCCUPIED AREAS

Toward the end of the hostilities of World War II, it was recognized that an acute world food shortage existed. The problem of increasing the supply of food became an integral part of the United States' occupation and administration of enemy territories. Secretary of War Patterson wrote that unless "the urgent requirements of Generals MacArthur and McNarney for the occupied areas" were met "in real volume, we anticipate * * * famine conditions." According to the Secretary's representative, "The occupying commanders in Germany, Japan, and Southern Korea report * * * that the choice may be considered one of supplying additional food or additional troops to control the conquered peoples."

Quantities of food necessary to alleviate the problem were not in existence. Even if food has been available, shipping capacity to transport it could not be obtained. The use of fertilizer, therefore, to increase the production of foodstuffs in occupied areas presented an obvious means of avoiding widespread famine and unrest. A ton of fertilizer can produce 7 tons of food and it helps people in occupied areas, in permitting them to grow their own food, to help themselves. The securing of fertilizer for occupied areas was therefore a practical solution to a difficult problem.

Under its program of supplying fertilizer for occupied areas, the Government produced the material known as fertilizer grade ammonium nitrate (hereafter referred to as FGAN or fertilizer). FGAN as a fertilizer had been recognized for several years in agriculture. This was due to the fact that ammonium nitrate, the basic ingredient

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for FGAN, has a high free nitrogen content, an essential to plant growth. Furthermore, the Government had 15 surplus ordnance plants readily convertible for the manufacture of ammonium nitrate fertilizer. When it became clear that the Government could produce a satisfactory fertilizer and also utilize its surplus ammonium nitrate facilities, Secretary of War Patterson decided that the program should be undertaken. He "reported in substance this decision to the Cabinet" where it was "approved and the decision was to go ahead with this production."

Production of fertilizer

In May 1946, the Director of the Office of War Mobilization and Reconversion requested the War Department "as an emergency matter for national defense" to undertake the production of the fertilizer program "without delay, and to take whatever action is appropriate to expedite the attainment of maximum production." The wartime plants were released to the Secretary of War and the Army Chief of Ordnance was directed to carry the program into effect.

The Army entered into a number of cost-plus-fixed-fee contracts with private firms—including the Du Pont Co. and Hercules Powder Co.—to "operate the installation * * * described herein for the graining of ammonium nitrate (fertilizer grade)," but subjecting "the work to be done by the contractor * * * to the general supervision, direction, control, and approval of the contracting officer." A detailed set of specifications was drawn up and sent to each plant. Army personnel were appointed to the plants and they were responsible for the application of these specifications and the meeting of production schedules, pursuant to an Army standard operating procedure.

Basic ingredients of fertilizer

The basic ingredient of FGAN was ammonium nitrate, long used as a component in explosives. Its military use was primarily in combination with TNT to form amatol, an explosive used in World War I and the first years of World War II. Pure ammonium nitrate, aside from its high nitrogen content, was not by itself, however, suitable as a fertilizer because of its hygroscopic property (i. e., its capacity to absorb moisture) which caused it to harden and cake, making it impractical for general agricultural use. A coating to moisture proof ammonium nitrate was needed. For this coating the Government turned to a patent for blasting explosives owned by the Hercules Powder Co. and known as the Cairn process (Cairn's Explosive Patent No. 2,211,738). This coating consisted of a mixture of petrolatum, rosin, and paraffin (referred to as PRP). In the manufacture of FGAN the Government first produced pure ammonium nitrate in certain other Government-owned plants and shipped it in solution to the reactivated graining centers for processing. There in the processing, a mixture of petrolatum, rosin, and paraffin (PRP) was added to insure against caking through water absorption. The material was then granulated to specifications, dried and packaged in 6-ply paper bags, marked "FERTILIZER Ammonium Nitrate."

Purchase of fertilizer from private producers

When the plan to reactivate idle ordnance plants was conceived, it was apparent that those plants would be unable to produce sufficient

quantities of fertilizer to meet the early requirements of the program. The War Department therefore requested an allocation by the Combined Food Board of sufficient fertilizer produced by privately owned commercial producers to meet its early need. This fertilizer was to be purchased under a sell-back arrangement whereby the fertilizer "borrowed" by the Government was to be returned in kind to the private producers out of future production under the program.

GOVERNMENT'S KNOWLEDGE OF DANGEROUS CHARACTERISTICS OF FERTILIZER

Background of ammonium nitrate, basic ingredient of FGAN

The Government knew it had a good fertilizer in FGAN. It was also aware of the fact that FGAN possessed certain dangerous qualities. Ammonium nitrate, the basic ingredient of the fertilizer FGAN, had a formidable reputation for treachery. Over the years it had caused, through explosion, considerable destruction of property and lives. For example, at Oppau, Germany, in 1921, 5,000 tons of ammonium nitrate, even though diluted with more stable ammonium sulphate, exploded with the loss of 586 lives, injury to 2,000 persons, and the substantial wiping out of the entire town of Oppau. And in Kensington, England, in 1896, ammonium nitrate exploded while being heated in an iron retort to produce nitrous oxide (laughing gas) for dental use, and destroyed the plant.

In addition to the physical evidence of disasters demonstrating the lethal qualities of ammonium nitrate, there was considerable evidence in the record, such as TVA reports, Bureau of Mines Bulletins, Army Ordnance manuals, and expert testimony, pointing to the fact that excessive heat, carbonaceous and other sensitiving materials, either alone or in combination with each other, would increase the explosive propensities of ammonium nitrate.

Development in 1943 of FGAN

With this knowledge, namely, that ammonium nitrate when subjected to high temperatures, contamination, carbonaceous and other sensitizing forces would explode, the Government in 1943 commenced the production of FGAN. In that year TVA, acting under its statutory delegation to undertake experiments and manufacture fertilizer (48 Stat. 61; 16 U. S. C., sec. 831 (d)) began the production of ammonium nitrate as a fertilizer, using surplus plant facilities formerly used by the Government for the production of ammonium nitrate as an explosive. TVA requested the Bureau of Mines, an agency intimately concerned with explosives testing, to conduct tests on several types of ammonium nitrate fertilizer made up by TVA. The Bureau advised that because of crowded conditions it was not in a position to make any large-scale tests but that in general it would not favor the mixing of organic materials with ammonium nitrate. It stated:

> In general, we do not favor the mixing of organic materials with ammonium nitrate and are of the opinion that while such mixtures may not be unduly sensitive, accidents due to other causes may be attributed to such mixtures to the embarrassment of those who are responsible for their use. We are very conservative in the recommendation of mixtures that have not been subjected to extended experience and tests for some of the reactions may be slow and some of the decomposition products may have an unexpected sensitivity. It would be our advice, therefore, that you do not promote such new mixtures unless they are imperative.

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For the foregoing and other reasons we do not favor the making of tests upon the mixtures you have suggested. Certainly we are not in a position to make any of the large scale explosion tests that are described in Research Bulletin No. 20 of the Underwriters Laboratories of December 1940 because of the crowded conditions in our Explosives Testing Station at Bruceton. We can make impact and friction tests but would request that you do not use the Bureau's findings in the promotion of the mixtures for reasons that I have indicated above.

As a result of that advice a series of conferences took place, attended by representatives of the War Production Board, responsible for allocation of fertilizers, the Department of Agriculture, the TVA, representatives from private industry and representatives of the Canadian Government. It was agreed that tests on the explosive nature of ammonium nitrate fertilizer were needed and that the tests be conducted by the Underwriters Laboratories. A contract between the War Production Board and the Underwriters Laboratories was signed in March 1944.

Meanwhile, and in November 1943, TVA and three ordnance plants started production of FGAN for commercial use.

Tests abandoned

In a series of reports to the War Production Board pursuant to the contract, the Underwriters Laboratories emphasized that test results clearly demonstrated that ammonium nitrate coated with organic matter was more sensitive to detonation than straight ammonium nitrate. In addition, the test shows that its sensitiveness was further increased when subjected to increases in temperature. These findings led to the recommendation that FGAN be submitted to a number of further tests to determine the effect of increased mass, confinement, and a long preheating period. These tests were never completed, however, but were terminated at an intermediate stage despite the protest of the Underwriters Laboratories and in the face of the suggestion that further research might point up suspected but unverified dangers.

In addition, at about the time the Underwriters Laboratories undertook the testing of fertilizer for the War Production Board, an explosion at Wolf Creek Ordnance Plant brought about by oil-contaminated ammonium nitrate, caused Army Ordnance to seek advice from the Bureau of Mines and several commercial producers with long experience in the manufacture of explosives, concerning the hazards of adding coating mixtures (PRP), to ammonium nitrate at high temperatures. In answering, Hercules Powder Co. and Atlas Powder Co. each emphasized the extreme hazard involved in such a product. The Bureau of Mines pointed up the need for more testing. Du Pont Co. reported that it had completely discontinued the coating of ammonium nitrate as a result of several explosions, including a fatal blast attributed to the presence of petrolatum in an evaporating pan.

The record of the court proceedings in the test case relating to the Texas City disaster comprises 39 volumes and some 33,000 pages of testimony and exhibits. In addition there are three volumes of typewritten transcript of committee hearings. It would be a most difficult task resulting in a voluminous report if the committee was to go into a detailed account and analysis of all the testimony. For this reason and to simplify matters there has been set out in the appendix a compendium of statements, all by responsible officials and agencies

of the United States Government.[18] The committee believes that these statements clearly demonstrate the Government's awareness and knowledge of the dangers and explosive characteristics of FGAN.

Events subsequent to 1946 (initiation of foreign fertilizer program)

In the face of the history of explosions, however, and despite the need for further testing of FGAN's dangerous potentials, the Government in mid-1946 expanded the production of FGAN to meet its program commitments of providing fertilizer for Japan, Korea, and Germany. It is clear that Ordnance was preoccupied with the suitability of FGAN as a fertilizer rather than as an inherently dangerous explosive. The Government viewed itself as "an industrial organization" and considered the FGAN program a "commercial venture" in which the primary purpose was to insure only that its product met specific requirements as a fertilizer. It was reported at a field directors' meeting for ammunition plants in August 1946, that:

> The inspection in this program should be held to the minimum that we need to determine that the material produced is in accordance with the specifications. It isn't intended that there will be an elaborate inspection division at any of the plants, but it will be necessary that inspection be performed. This is a commercial venture, and a great deal of money has been entrusted to the Ordnance Department to produce a quantity of acceptable material.

Complaints of charred and broken paper bags

In the procedures adopted by Army Ordnance there was no substantial opportunity for the FGAN, after being processed at high temperatures, to cool. It was, in many instances, after being packed in paper bags, loaded into sealed boxcars for shipment. Metal containers, which would have minimized the danger in bagging at such high temperatures, were not used. The inescapable result of bagging hot FGAN in paper containers was a continuing history of complaints relating to charred, broken bags. Texas City and other ports continually were making complaints to Army Ordnance centers.

The vice president of the Texas City Terminal Railway Co. (warehousemen for the FGAN at Texas City) testified that hot and damaged bags were received at Texas City as early as June 1946. He complained to one Ordnance plant that the bags were "scorched to the breaking point" and were "so hot, in many instances, that it was impossible for our men to handle the bags until they were allowed to cool off."

Failure of Government to give notice

The Government, however, did little about those complaints. The delivery of FGAN to the carriers and other people handling the shipments continued without change in handling procedure or notification of FGAN's dangerous characteristics. Instead, the Government emphasized that FGAN was a fertilizer rather than an inherently dangerous explosive. The labeling on the bagged FGAN was as follows:

> "FERTILIZER" in large letters; in smaller letters underneath, "Ammonium Nitrate, nitrogen 32.5%"

According to the testimony, the word "fertilizer" is normally regarded in industry as a familiar and harmless substance. Workmen who

[18] The compendium of statements was submitted as an exhibit by the attorneys appearing for claimants at the hearings before the special subcommittee in Galveston, Tex., and it is a part of the record of those hearings.

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handled the material at Texas City testified that they viewed FGAN as no less safe and inert than flour or cement.

FERTILIZER WHICH BLEW UP AT TEXAS CITY

Produced by Government and "sold" to private producer

The particular fertilizer which blew up at Texas City had been produced at three of the Army ordnance plants reactivated by the Government for the fertilizer program and pursuant to the sell-back arrangement was allotted to the Lion Oil Co., one of the commercial producers which had furnished fertilizer to the Government in 1946. The sale to Lion Oil Co. was covered by a contract dated January 10, 1947, which expressly provided that title to the fertilizer being sold by the War Department was to pass to Lion Oil upon its making payment for the FGAN to the Quartermaster purchasing office in New York City.[2] Since the contract provided that Lion Oil could designate a third party recipient, Lion contracted for resale of the fertilizer with the French Supply Council, a French Government agency. The French Supply Council had earlier secured a preferential fertilizer allocation from the Civilian Production Administration, and, in pursuance thereof, the French shipping orders were transmitted to Lion Oil, which turned them over to the Army for execution.

The fertilizer, in accordance with contract requirements, was shipped by rail, under Government bills of lading, from ordnance plants in Nebraska and Iowa to the French Supply Council as consignee in Texas City. It was stored in shipside warehouses in Texas City.

Loading of FGAN on steamship "Grandcamp"

By April 15, 1947, 1,850 tons of FGAN had been loaded on the steamship *Grandcamp*, a French Liberty ship owned by the Republic of France, and 1,000 tons on the privately owned steamship *Highflyer*. Loading of the fertilizer from warehouse to ships' stowage was performed by independent stevedores in the employ of the vessels. The *Grandcamp* carried, in addition, a quantity of munitions originally consigned to Venezuela, but for undisclosed reasons not discharged there. The *Highflyer* also had an additional cargo of 2,000 tons of sulfur.

The customary method of stowing an inert cargo, which was the accepted method of stowing FGAN, was followed in loading the steamships *Grandcamp* and *Highflyer*. Dunnage, consisting of wooden boards and paper to protect the cargo, was laid on the floor of the holds. This dunnage, of course, was carbonaceous and therefore combustible. The bags of FGAN were packed one on top of the other in solid layers with no space for ventilation.

Explosions at Texas City

Loading of No. 4 hold of the *Grandcamp*, where the fire started, ceased at 5 p. m. in the afternoon of April 15, and its hatch was closed and remained battened down until 8 o'clock the following morning when longshoremen boarded the ship and started removing the hatch covers. At approximately 8:15 a. m. smoke was observed coming from hold No. 4 containing 880 tons of FGAN and, upon inspection, fire was discovered. Efforts to halt the fire were unavailing. The captain ordered all personnel off the ship, Meanwhile the hatches

[2] Payment was not made, however, until long after the disaster.

were covered and steam was introduced into the holds to smother the flames and put out the fire. This is a normal and accepted method of fighting fire on board ship.

At 9:15 a. m. the fertilizer on the *Grandcamp* exploded with tremendous force. The explosion resulted in the spread of the fire to warehouses and other nearby structures and to the steamship *Highflyer* in a nearby slip. The fires continued all day and into the night. At approximately 1:10 a. m. on April 17 the FGAN in the *Highflyer* detonated, completely demolishing that vessel and the S. S. *Wilson B. Keene* which had been lying alongside. These explosions and resulting conflagrations virtually leveled the dock area in Texas City. In addition, approximately 1,000 residences, industrial plants, and other buildings were either totally destroyed or suffered major structural damage. Flying steel fragments and portions of the cargo of *Grandcamp*—including a 30-foot-long drill stem weighing over a ton—were found 2 miles distant. As noted earlier about 570 persons suffered violent death. More than 3,500 other people were injured and suffered either delayed death or mental and physical anguish attendant upon months of hospital confinement and medical care.

CAUSATIVE FACTORS OF EXPLOSIONS

In the opinion of the committee, the evidence demonstrates that the tremendous tonnage of coated FGAN, hot and tightly packed in the hold of the *Grandcamp*, ignited and exploded. Two and two-thirds Liberty ships were completely obliterated and destroyed and, with them, evidence which may have enabled everyone to know the exact process which produced the fire in the hold of the *Grandcamp* and the explosion. It was suggested, as a plausible explanation of the origin of the fire, that a lighted cigaret butt may have been dropped into the hold of the *Grandcamp* in the space between the ship's shell and the stacked FGAN, during the loading operations. However, a review of some 33,000 pages of testimony and exhibits disclosed no direct or dependable evidence in support of this supposition.

The committee considers as a more reasonable explanation—one recognzed by the Government itself—that the coated FGAN (which generated its own heat), being hot and tightly confined in great mass in the hold of the *Grandcamp* without proper ventilation, ignited spontaneously and exploded. As one Bureau of Mines' expert who investigated the disaster testified, these explosions were a classic example of simple factors of mass, heat, density, and confinement.

This analysis of the cause of the explosion in the *Grandcamp* is firmly substantiated by Government tests, by scientific authority, and by expert witnesses who testified in the case before the Federal courts. (See, for examples of the Government's recognition that FGAN is capable of spontaneous combustion, Bureau of Mines Report I. C. 7463, June 1948; Bureau of Ordnance, Official Report Texas City Disaster, Circular No. 719.) The Government, in an official Picatinny Arsenal report, sets forth the probable manner in which the FGAN exploded (Rept. No. 1675, 1948).

b. When the hatch covers were removed on the following morning, the warm air in the hold started to rise and the air currents quickly fanned the smoldering fire and caused it to spread rapidly. The fire probably progressed most rapidly where the greatest amount of fuel—wooden dunnage and paper—was in contact

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with the bagged FGAN and the air could circulate most freely. During this time, molten FGAN probably flowed down the furning face to the bottom of the hold.

c. Within a relatively short time, some of the wooden dunnage burned away and the cargo began to shift and settle, probably against the shell of the ship, thus confining some of the molten burning FGAN in a closed space where gas pressure could develop rapidly. It was probably here that detonation originated and was propagated to the rest of the cargo.

If additional evidence was needed to buttress the above statements as to the cause of the disaster, it need only be pointed out that part of the FGAN which was on the docks at Texas City awaiting stowage at the time of the explosions was later reshipped by rail to the port of Baltimore, Md., where it was stowed aboard the steamship *Ocean Liberty* for shipment overseas. On July 28, 1947, at the port of Brest, France, that FGAN exploded and completely demolished the *Ocean Liberty* and all its cargo. Thereafter, in a suit filed in admiralty against the charterers of the vessel and its general agent, the evidence established and the district court found that the fire and explosion which destroyed the *Ocean Liberty* was due to the spontaneous combustion of the FGAN. (*A/S Ludwig Mowinclels Rederi* v. *Accinanto, Limited*, 99 F. Supp. 261, 264, 274). While the case was reversed on other grounds and remanded, the Court of Appeals, Fourth Circuit, nevertheless accepted the district court's finding of facts that the explosion was due to the spontaneous combustion of the FGAN (199 F. 2d 134, 138).

GOVERNMENT'S RESPONSIBILITY

The event of the disaster at Texas City was, of course, the best proof that FGAN is an inherently dangerous explosive. The Army had been using ammonium nitrate for years as a component in the manufacture of explosives. The particular FGAN which blew up at Texas City was manufactured under an explosives patent at Army ordnance plants formerly used for the manufacture of munitions. The production program was placed under the immediate direction of the Army's Field Director of Ammunition Plants. Advice on the methods of manufacture and the hazards of processing the fertilizer was sought from experienced commercial producers of high explosives. There was a continuing history of fires, complaints of overheated FGAN in charred bags, and incidents of ammonium nitrate explosions. The committee is of the opinion that there is not the slightest basis for the belief that FGAN was an impotent product.

Yet, in the shipment of this product, the Government treated it as an everyday commodity of commerce. Common carriers and people who handle cargo in transit cannot be expected to possess the facilities or the technical knowledge to determine for themselves the latent and inherent dangers of complex compounds. It is incumbent upon manufacturers today to keep pace with the times and use the greatest caution and integrity to insure the safety and well-being of all.

Any Government claim, therefore, that FGAN's hazards were unforeseen is unavailing in the light of its knowledge that FGAN possessed explosive characteristics. It had the duty and obligation to know its own product and to ascertain the enormity of the forces it was turning loose upon unsuspecting persons.

It has been urged that intervening acts of negligence—longshoremen allegedly smoking about the holds of the *Grandcamp*—may have

caused the explosions. This contention is entitled to little weight when it is recalled that FGAN is an inherently dangerous explosive and that there was an absence of any warning that it was either inflammable or explosive.

RELATIONSHIP OF UNITED STATES TO FERTILIZER AT TEXAS CITY

Much argument has been advanced concerning the passage of title or ownership of the particular FGAN which blew up in Texas City to the Lion Oil Co. and, in turn, to the French Supply Council. It has been urged that when the Government returned the fertilizer to Lion Oil by delivery to the railroad cars at the ordnance plants, it completely divested itself of all ownership, possession, and control of the FGAN. When the facts are carefully analyzed, however, and viewed in the light of the Government's entire foreign aid fertilizer program, it is believed that it made very little difference whether title to the FGAN passed or did not pass legalwise to Lion Oil because the Government had already committed the material to France and was in control, through a system of priorities, of the materials course. While the Government did not ship the FGAN directly itself and the material traveled through private industry to comply with the sell-back arrangement, private producers nevertheless were still required to ship the fertilizer according to and in compliance with Government directions. The Government was permitting a deviation of its method but not of its objective.

Initiated for relief of occupied areas

It will be recalled that the whole fertilizer program was originally set up to take care of occupied areas only, i. e., Germany, Japan, and Southern Korea. The FGAN taken from the commercial producers was supposedly a temporary measure to be used until such time as the reactivated Army ordnance plants could get into full production.

The War Department secured fertilizer under this temporary measure by obtaining an allocation for the material from the Combined Food Board.[3] The Department paid the commercial producers for the fertilizer and, under a sell-back arrangement as required by Combined Food Board allocation, it agreed to return an equivalent amount of the fertilizer supplied.

Program expanded

Under the temporary sell-back arrangement, return FGAN was to be supplied from Ordnance production during the spring of 1947. However, the nitrogen condition in the world continued to be serious. War ravaged countries like France, while no occupied areas, nevertheless needed an increase in the production of food. In addition, France was threatened with the possibility of a communistic government. As stated in one report, the situation "was most critical in France and in the nations served by UNRRA, where short rations and actual starvation exist."

In June 1946, when the Nitrogen Producers Industry Advisory Committee [4] met, its purpose was to discuss, among other things, the

[3] The Combined Food Board was an international agency which allocated food, fertilizer, and other scarce commodities among the United States and its allies. The Board's allocation of United States production were enforced by the Civilian Production Administration, the governmental agency controlling priorities. Advising the Civilian Production Administration on the question of nitrogen supplies was the Nitrogen Producers Industry Advisory Committee, a committee composed of commercial producers and headed by the Deputy Director of CPA's Chemical Division.

[4] See footnote 3.

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estimated nitrogen available to meet the need of domestic use and the requirements of areas overseas occupied by the United States. When it met in November, however, the purpose of its meeting was expanded to "discuss means by which CPA will be enabled to meet International Combined Food Board allocation of ammonium sulphate and ammonium nitrate to foreign countries and United States possessions." In other words, the Government's fertilizer program was no longer confined to occupied areas but had been expanded to take in "foreign countries and United States possessions." The additional overseas areas listed for fertilizer aid, under the expanded program, included such nonoccupied countries as Philippines, Latin American Republics, France and colonies, Netherlands, Netherlands East Indies, UNRRA, and Finland.

Several members of the nitrogen industry called attention to the position in which they would be placed if, as proposed, the Army shipped its nitrogen production to other countries instead of returning it to the producers as originally promised. Producers had made commitments to their domestic customers and depended on the Army supply under the sell-back arrangements to fill their own orders.

Adoption of a device

The Government, however, was determined that its own commitments should be met. It was, of course, faced with the fact that if the fertilizer was shipped directly overseas it would be in a position of breaking faith with commercial producers for the return of the material. In order to prevent this, it worked out and adopted the device of delivering the fertilizer to private industry and then, through a system of priorities, it forced the producers to sell the material to France and the foreign countries to which it was committed.

The particular FGAN involved at Texas City was delivered to Lion Oil for shipment to France in the following manner: The Federal allocation of ammonium nitrate on November 7, 1946, for French colonies was fixed for the first quarter of 1947 at 55,000 tons. This allocation, it may be well to note, was made before the material which blew up at Texas City was manufactured, and also before the Lion Oil Co. entered into the so-called contract with the Government under the sell-back arrangement. That contract was not written until January 10, 1947.

Prior to the date of the contract and on November 25, 1946, the French Supply Council, acting for the Government of France, filed application with the Civilian Production Administration [5] for approximately 70,000 short tons of FGAN. The applications were approved by the CPA and given CC priority rating. A memorandum relating to these applications contained the following illuminating paragraphs:

> As you know, we have been informed that the United States Army is now returning to producers the tonnage of ammonium nitrate which they had borrowed. Our chemicals division states that these producers are reluctant to ship to export either from this returning tonnage or from new production and, therefore, the United States Government commitment is in danger of not being fulfilled. Mr. Hart, chemicals division, is of the opinion that the only method by which this export requirement will be filled is through the use of a CC rating authorized to cover these unfilled balances.
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> * * * * * * *
>
> As indicated above, producers are still reluctant to ship to export. We had hoped that with the return of the borrowed quantities this reluctance would

[5] See footnote 3.

disappear. Since it has not, it is recommended that a CC rating be authorized to the quantities indicated in order that these applicants may receive delivery of the balances which have been allocated to them.

After CPA approved the applications and issued a priority rating for the fertilizer, it assigned a quota to Lion Oil. A contract was then entered into between Lion and the purchasing agent of the French Supply Council for the sale and exportation of the FGAN to France. In accordance with French shipping instructions transmitted through Lion, the FGAN was shipped to Texas City.

Government control

It is clear from the foregoing that the whole operation was one of Government control. The so-called delivery to Lion was at best a mere paper transaction. Lion had the role of a mere automaton in the fulfillment of the Government's commitments to France. It was not connected in any way with the manufacturing, shipping, testing, or handling of the FGAN which blew up at Texas City and while it may have "resold" the material to the French Supply Council, it had no more power or control over the sale or disposition of the FGAN, than if the Government itself had shipped the material to France. Whatever may be the technical and legal connotations to be drawn from the sale transaction, there can be no doubt in the minds of fair and reasonable persons that because of its complete dominance over all phases of the program, the responsibility for the FGAN involved in the Texas City disaster was the Government's. The committee is of the opinion that it would be wrong indeed to permit the Government, when for reasons of expediency it continues to exercise substantially all the prerogatives of ownership over the fertilizer, to avoid responsibility therefor simply because bare legal title may have been in another.

CONCLUSIONS

There can be no doubt that the fertilizer known as FGAN is a dangerous and hazardous explosive. The disaster itselt is ample proof of this fact. As the majority opinion in the Supreme Court succinctly states:

> Following the disaster, of course, no one could fail to be impressed with the blunt fact that FGAN would explode (*Dalehite* v. *United States*, 346 U. S. 15, 23).

The Army knew that FGAN possessed dangerous characteristics. It have been using ammonium nitrate, the primary ingredient of FGAN, for years as a component in the manufacture of explosives. In fact, the particular FGAN which blew up at Texas City was manufactured under an explosives patent at Army ordnance plants formerly used for the manufacture of munitions. Government responsibility for the whole program can be fixed by the statement of the Supreme Court which, on page 18 of the majority opinion, reads:

> This fertilizer had been produced and distributed at the instance, according to the specifications and under the control of the United States.

Tests conducted at the request of the Government to determine the explosive and fire hazards of FGAN were terminated by it at an intermediate stage against the recommendations of a research laboratory hired by the Government, and in the face of the suggestion that further research might point up suspected dangers. In addition

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there was a continuing history of fires, complaints of overheated FGAN in charred bags, and incidents of ammonium nitrate explosions. Yet, in the shipment of this product, the Government treated it as an everyday commodity of commerce labeling it simply as a fertilizer without warning of its propensities. Certainly the common carriers and people who handled the cargo in transit could not be expected to possess the facilities or technical knowledge to determine for themselves the latent and inherent dangers of this complex compound. Manufactureres today must keep pace with the times and use the greatest caution and integrity to insure the safety and well-being of all. Since the Government knew that FGAN possessed explosive characteristics, it had the duty and obligation, as would be expected of any manufacturer, to know its own product thoroughly and to ascertain the enormity of the forces it was turning loose upon unsuspecting persons.

The particular fertilizer which blew up at Texas City was part of a project through which the United States Government was seeking to carry out a program of foreign aid to various war-ravaged and famine-stricken areas overseas. It not only initiated the program but controlled all phases of the project right from the manufacturing stage to the final delivery of the fertilizer at its destination. While it has been claimed that, pursuant to a sell-back arrangement, title to the FGAN at Texas City was not in the United States Government, a thorough study of the evidence makes it all too clear that the Government exercised substantially all the prerogatives of ownership over the fertilizer and, through a system of priorities, controlled or had the power to control the entire fertilizer program to the exclusion of all others.

Of course, whether the Government owned the fertilizer which blew up at Texas City or whether title to the product had passed to another is, in the final analysis, unnecessary to decide. The evidence before the committee overwhelmingly proves that FGAN, an inherently dangerous and hazardous explosive, was introduced into the flow of commerce by the Government without proper safeguard. That fact alone, in the opinion of the committee, is sufficient to place responsibility on the Government, for it is a well established jurisprudential principle that the manufacturer of a dangerous commodity who introduces it into the stream of commerce must fully test its properties and even though the product has passed beyond its ownership and control, it must nonetheless take adequate precautions and give adequate warnings for the protection of those who may be exposed to the danger. This the Government failed to do. And as a result over 4,000 innocent victims—people who not only were incapable of contributing to the disaster but, because of the suddenness and force of the explosions, could not even take flight from it—were either injured or killed. The committee therefore believes that it is morally right that the United States Government should reimburse these claimants for the injury and damage caused by its officers and employees in negligently carrying out the FGAN program.

In undertaking the manufacture and production of FGAN, the Government took what is known as a calculated risk. As the majority opinion of the Court of Appeals for the Fifth Circuit states:

> Even if some danger were recognized, the necessity of providing means of existence to the devasted areas might have called for the exercise of discretion as to whether to take a "calculated risk." (197 F. 2d, 771, 778.)

The "calculated risk" was taken for the benefit of the devastated areas of the world. It resulted in a benefit to the United States as a whole in that it prevented unrest and disorders which would have resulted from hunger and mass starvation. As noted in the court of appeals opinion, such disorders would have required the maintenance of adequate military forces in occupied areas (197 F. 2d 777) and might have lost some of our allies like France to communism. Since the fertilizer program was taken by the Government for humanitarian purposes, among others, it seems only right that it should reimburse, insofar as it is humanly possible, the comparatively few people who happened to be injured or damaged because of it.

RECOMMENDATIONS

For reasons set out in the preceding pages, the committee is of the considered opinion that the Government is wholly responsible for the explosions at Texas City and the resulting catastrophe. It therefore recommends that Congress take appropriate action, through legislation, to compensate claims for property damage, personal injuries, and death caused by the explosions which occurred at Texas City, Tex., on April 16 and 17, 1947.

The committee gave careful consideration to the claims of the so-called subrogated insurance companies, but because of their complexity and mixed opinions as to their magnitude, eliminated such claims from the benefits of this bill and, without deciding their merits.

The committee earnestly urges upon the Senate that speedy approval be given to S. 1077, as amended.

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